

AMENDED IN SENATE MAY 16, 2006

AMENDED IN SENATE APRIL 6, 2006

**SENATE BILL**

**No. 1481**

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**Introduced by Senator Poochigian**

February 23, 2006

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An act to amend Sections 1101, 1103, 1201, 2103, 2104, 2202, 2310, 2323, 2401, 2503, 2505, 2506, 2509, 2605, 2705, 3103, 4104, 4210, 5103, 8102, 8103, 9102, 9203, 9207, 9208, 9301, 9310, 9312, 9313, 9314, 9317, 9338, 9601, 10103, 10501, 10514, 10518, 10519, 10526, 10527, 10528, 11105, 11106, and 11204 of, to amend and renumber Sections 1107, 1205, 1207, 1208, and 1209 of, to amend, renumber, and add Sections 1106, 1108, 1202, 1203, and 1204 of, to add Chapter 3 (commencing with Section 1301) to Division 1 of, to repeal Sections 1105, 1210, 2208, 10207, and 13104 of, to repeal and add Sections 1102 and 1206 of, and to repeal and add Division 7 (commencing with Section 7101) of, the Commercial Code, relating to commercial transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1481, as amended, Poochigian. Commercial transactions.

(1) Existing provisions of the Commercial Code generally govern commercial transactions.

This bill would revise those provisions generally in accordance with the revisions of Uniform Commercial Code Article 1 proposed by the National Conference of Commissioners on Uniform State Law.

Specifically, the bill would revise ~~choice of law provisions for commercial transactions, including establishing specific choice of law provisions for consumers, as defined. The bill would revise various definitions, including the definitions for "bill of lading," "document of~~

title,” and “security interest.” The bill would revise the definition of “good faith” to also mean the observance of reasonable commercial standards of fair dealing. The bill would expand the definition of “purchase” to include taking by lease. The bill would revise the definition of “bank” to include savings banks, savings and loan associations, credit unions, and trust companies. The bill would make various other definitional changes relating to commercial transactions.

The bill would also modify, limit, and supersede specified portions of the federal Electronic Signatures in Global and National Commerce Act as it relates to the Commercial Code. The bill would revise provisions relating to the judicial recognition of specified documents relating to commercial transactions, and to the judicial presumptions relating to those documents. The bill would revise provisions governing waiver or renunciation of a claim or right after breach by requiring agreement of the aggrieved party. The bill would make conforming changes.

(2) Existing law sets forth principals governing documents of title, including bills of lading and warehouse receipts, and governs the rights, duties, and liabilities of a warehouseman or carrier as well as of the holder of the document and other parties to a transaction involving the document of title.

This bill would revise those provisions generally in accordance with the revision of Uniform Commercial Code Article 7 proposed by the National Conference of Commissioners on Uniform State Laws.

Specifically, the bill would revise those provisions to apply to electronic documents of title. The bill would also revise terms used in those provisions, substituting “warehouse” for “warehouseman” and adding definitions for certain terms relating to documents of title. The bill would clarify the circumstances making a document of title nonnegotiable and the requisite terms for a valid warehouse receipt. The bill would delete references to tariffs or filed classifications and make other changes and would expand the liability limitation a warehouse may impose in a warehouse receipt. The bill would also revise the warehouse and carrier lien provisions.

This bill would also revise the provisions governing documents of title to conform with those in the Uniform Commercial Code. The conforming changes would be made by the bill to certain definitional provisions and negotiability characteristics of documents of title. The bill would also make conforming changes by deleting a provision that limits a warehouse’s liability to the actual value of the goods in

designated circumstances and by deleting a provision in a warehouse receipt relating to the storage and handling rate for goods in a public utility warehouse. The bill would make other conforming changes by describing the obligations of a bailee under a delivery order and the defeasance of title through an unaccepted delivery order. The bill would also make conforming changes to warehouse lien provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1101 of the Commercial Code is  
2 amended to read:  
3 1101. This code may be cited as the Uniform Commercial  
4 Code.  
5 SEC. 2. Section 1102 of the Commercial Code is repealed.  
6 SEC. 3. Section 1102 is added to the Commercial Code, to  
7 read:  
8 1102. This division applies to a transaction to the extent that  
9 it is governed by another division of this code.  
10 SEC. 4. Section 1103 of the Commercial Code is amended to  
11 read:  
12 1103. (a) This code shall be liberally construed and applied  
13 to promote its underlying purposes and policies, which are:  
14 (1) to simplify, clarify, and modernize the law governing  
15 commercial transactions;  
16 (2) to permit the continued expansion of commercial practices  
17 through custom, usage, and agreement of the parties; and  
18 (3) to make uniform the law among the various jurisdictions.  
19 (b) Unless displaced by the particular provisions of this code,  
20 the principles of law and equity, including the law merchant and  
21 the law relative to capacity to contract, principal and agent,  
22 estoppel, fraud, misrepresentation, duress, coercion, mistake,  
23 bankruptcy, and other validating or invalidating cause  
24 supplement its provisions.  
25 SEC. 5. Section 1105 of the Commercial Code is repealed.  
26 SEC. 6. Section 1106 of the Commercial Code is amended  
27 and renumbered to read:  
28 1305. (a) The remedies provided by this code shall be  
29 liberally administered to the end that the aggrieved party may be

1 put in as good a position as if the other party had fully performed  
2 but neither consequential or special damages nor penal damages  
3 may be had except as specifically provided in this code or by  
4 other rule of law.

5 (b) Any right or obligation declared by this code is enforceable  
6 by action unless the provision declaring it specifies a different  
7 and limited effect.

8 SEC. 7. Section 1106 is added to the Commercial Code, to  
9 read:

10 1106. In this code, unless the statutory context otherwise  
11 requires:

12 (1) words in the singular number include the plural, and those  
13 in the plural include the singular; and

14 (2) words of any gender also refer to any other gender.

15 SEC. 8. Section 1107 of the Commercial Code is amended  
16 and renumbered to read:

17 1306. A claim or right arising out of an alleged breach may  
18 be discharged in whole or in part without consideration by  
19 agreement of the aggrieved party in an authenticated record.

20 SEC. 9. Section 1108 of the Commercial Code is amended  
21 and renumbered to read:

22 1105. If any provision or clause of this code or its application  
23 to any person or circumstance is held invalid, the invalidity does  
24 not affect other provisions or applications of the code which can  
25 be given effect without the invalid provision or application, and  
26 to this end the provisions of this code are severable.

27 SEC. 10. Section 1108 is added to the Commercial Code, to  
28 read:

29 1108. This chapter modifies, limits, and supersedes the  
30 federal Electronic Signatures in Global and National Commerce  
31 Act, 15 U.S.C. Section 7001 et seq., except that nothing in this  
32 chapter modifies, limits, or supersedes Section 7001(c) of that act  
33 or authorizes electronic delivery of any of the notices described  
34 in Section 7003(b) of that act.

35 SEC. 11. Section 1201 of the Commercial Code is amended  
36 to read:

37 1201. (a) Unless the context otherwise requires, words or  
38 phrases defined in this section, or in the additional definitions  
39 contained in other divisions of this code that apply to particular  
40 divisions or chapters thereof, have the meanings stated.

(b) Subject to definitions contained in other divisions of this code that apply to particular divisions or chapters thereof:

(1) “Action,” in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.

(2) “Aggrieved party” means a party entitled to pursue a remedy.

(3) “Agreement,” as distinguished from “contract,” means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 1303.

(4) “Bank” means a person engaged in the business of banking, and includes a savings bank, savings and loan association, credit union, and trust company.

(5) “Bearer” means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or endorsed in blank.

(6) “Bill of lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods

1 or has a right to recover the goods from the seller under Division  
2 2 (commencing with Section 2101) may be a buyer in ordinary  
3 course of business. “Buyer in ordinary course of business” does  
4 not include a person that acquires goods in a transfer in bulk or as  
5 security for or in total or partial satisfaction of a money debt.

6 (10) “Conspicuous,” with reference to a term, means so  
7 written, displayed, or presented that a reasonable person against  
8 whom it is to operate ought to have noticed it. Whether a term is  
9 “conspicuous” or not is a decision for the court. Conspicuous  
10 terms include the following:

11 (A) a heading in capitals equal to or greater in size than the  
12 surrounding text, or in contrasting type, font, or color to the  
13 surrounding text of the same or lesser size; and

14 (B) language in the body of a record or display in larger type  
15 than the surrounding text, or in contrasting type, font, or color to  
16 the surrounding text of the same size, or set off from surrounding  
17 text of the same size by symbols or other marks that call attention  
18 to the language.

19 (11) “Consumer” means an individual who enters into a  
20 transaction primarily for personal, family, or household purposes.

21 (12) “Contract,” as distinguished from “agreement,” means the  
22 total legal obligation that results from the parties’ agreement as  
23 determined by this code and as supplemented by any other  
24 applicable laws.

25 (13) “Creditor” includes a general creditor, a secured creditor,  
26 a lien creditor, and any representative of creditors, including an  
27 assignee for the benefit of creditors, a trustee in bankruptcy, a  
28 receiver in equity, and an executor or administrator of an  
29 insolvent debtor’s or assignor’s estate.

30 (14) “Defendant” includes a person in the position of  
31 defendant in a counterclaim, cross-claim, or third-party claim.

32 (15) “Delivery,” with respect to an instrument, document of  
33 title, or chattel paper means voluntary transfer of possession.

34 (16) “Document of title” includes a bill of lading, dock  
35 warrant, dock receipt, warehouse receipt, or order for the delivery  
36 of goods, and also any other document which in the regular  
37 course of business or financing is treated as adequately  
38 evidencing that the person in possession of it is entitled to  
39 receive, hold, and dispose of the document and the goods it  
40 covers. To be a document of title, a document must purport to be

1 issued by or addressed to a bailee and purport to cover goods in  
2 the bailee's possession which are either identified or are fungible  
3 portions of an identified mass.

4 (17) "Fault" means a default, breach, or wrongful actor  
5 omission.

6 (18) "Fungible goods" means:

7 (A) Goods of which any unit, by nature or usage of trade, is  
8 the equivalent of any other like unit; or

9 (B) Goods that by agreement are treated as equivalent.

10 (19) "Genuine" means free of forgery or counterfeiting.

11 (20) "Good faith," except as otherwise provided in Division 5  
12 (commencing with Section 5101), means honesty in fact and the  
13 observance of reasonable commercial standards of fair dealing.

14 (21) "Holder," means:

15 (A) the person in possession of a negotiable instrument that is  
16 payable either to bearer or, to an identified person that is the  
17 person in possession; or

18 (B) the person in possession of a document of title if the goods  
19 are deliverable either to bearer or to the order of the person in  
20 possession.

21 (22) "Insolvency proceeding" includes an assignment for the  
22 benefit of creditors or other proceeding intended to liquidate or  
23 rehabilitate the estate of the person involved.

24 (23) "Insolvent" means:

25 (A) having generally ceased to pay debts in the ordinary  
26 course of business other than as a result of bona fide dispute;

27 (B) being unable to pay debts as they become due; or

28 (C) being insolvent within the meaning of federal bankruptcy  
29 law.

30 (24) "Money" means a medium of exchange currently  
31 authorized or adopted by a domestic or foreign government. The  
32 term includes a monetary unit of account established by an  
33 intergovernmental organization or by agreement between two or  
34 more countries.

35 (25) "Organization" means a person other than an individual.

36 (26) "Party," as distinguished from "third party," means a  
37 person that has engaged in a transaction or made an agreement  
38 subject to this code.

39 (27) "Person" means an individual, corporation, business trust,  
40 estate, trust, partnership, limited liability company, association,

1 joint venture, government, governmental subdivision, agency, or  
2 instrumentality, public corporation, or any other legal or  
3 commercial entity.

4 (28) “Present value” means the amount as of a date certain of  
5 one or more sums payable in the future, discounted to the date  
6 certain by use of either an interest rate specified by the parties if  
7 that rate is not manifestly unreasonable at the time the transaction  
8 is entered into or, if an interest rate is not so specified, a  
9 commercially reasonable rate that takes into account the facts and  
10 circumstances at the time the transaction is entered into.

11 (29) “Purchase” means taking by sale, lease, discount,  
12 negotiation, mortgage, pledge, lien, security interest, issue or  
13 reissue, gift, or any other voluntary transaction creating an  
14 interest in property.

15 (30) “Purchaser” means a person that takes by purchase.

16 (31) “Record” means information that is inscribed on a  
17 tangible medium or that is stored in an electronic or other  
18 medium and is retrievable in perceivable form.

19 (32) “Remedy” means any remedial right to which an  
20 aggrieved party is entitled with or without resort to a tribunal.

21 (33) “Representative” means a person empowered to act for  
22 another, including an agent, an officer of a corporation or  
23 association, and a trustee, executor, or administrator of an estate.

24 (34) “Right” includes remedy.

25 (35) “Security interest” means an interest in personal property  
26 or fixtures which secures payment or performance of an  
27 obligation. “Security interest” includes any interest of a  
28 consignor and a buyer of accounts, chattel paper, a payment  
29 intangible, or a promissory note in a transaction that is subject to  
30 Division 9 (commencing with Section 9101). “Security interest”  
31 does not include the special property interest of a buyer of goods  
32 on identification of those goods to a contract for sale under  
33 Section 2401, but a buyer may also acquire a “security interest”  
34 by complying with Division 9 (commencing with Section 9101).  
35 Except as otherwise provided in Section 2505, the right of a  
36 seller or lessor of goods under Division 2 (commencing with  
37 Section 2101) or Division 10 (commencing with Section 10101)  
38 to retain or acquire possession of the goods is not a “security  
39 interest,” but a seller or lessor may also acquire a “security  
40 interest” by complying with Division 9 (commencing with



1 Section 9101). The retention or reservation of title by a seller of  
2 goods notwithstanding shipment or delivery to the buyer under  
3 Section 2401 is limited in effect to a reservation of a “security  
4 interest.”

5 Whether a transaction in the form of a lease creates a “security  
6 interest” is determined pursuant to Section 1203.

7 (36) “Send,” in connection with a writing, record, or notice  
8 means:

9 (A) to deposit in the mail or deliver for transmission by any  
10 other usual means of communication with postage or cost of  
11 transmission provided for and properly addressed and, in the case  
12 of an instrument, to an address specified thereon or otherwise  
13 agreed or, if there is none, to any address reasonable under the  
14 circumstances; or

15 (B) in any other way to cause to be received any record or  
16 notice within the time it would have arrived if properly sent.

17 (37) “Signed” includes using any symbol executed or adopted  
18 with present intention to adopt or accept a writing.

19 (38) “State” means a state of the United States, the District of  
20 Columbia, Puerto Rico, the United States Virgin Islands, or any  
21 territory or insular possession subject to the jurisdiction of the  
22 United States.

23 (39) “Surety” includes a guarantor or other secondary obligor.

24 (40) “Term” means a portion of an agreement that relates to a  
25 particular matter.

26 (41) “Unauthorized signature” means a signature made  
27 without actual, implied, or apparent authority. The term includes  
28 a forgery.

29 (42) “Warehouse receipt” means a receipt issued by a person  
30 engaged in the business of storing goods for hire.

31 (43) “Writing” includes printing, typewriting, or any other  
32 intentional reduction to tangible form. “Written” has a  
33 corresponding meaning.

34 SEC. 12. Section 1202 of the Commercial Code is amended  
35 and renumbered to read:

36 1307. A document in due form purporting to be a bill of  
37 lading, policy or certificate of insurance, official weigher’s or  
38 inspector’s certificate, consular invoice, or any other document  
39 authorized or required by the contract to be issued by a third  
40 party is prima facie evidence of its own authenticity and

1 genuineness and of the facts stated in the document by the third  
2 party.

3 SEC. 13. Section 1202 is added to the Commercial Code, to  
4 read:

5 1202. (a) Subject to subdivision (f), a person has “notice” of  
6 a fact if the person:

7 (1) has actual knowledge of it;

8 (2) has received a notice or notification of it; or

9 (3) from all the facts and circumstances known to the person at  
10 the time in question, has reason to know that it exists.

11 (b) “Knowledge” means actual knowledge. “Knows” has a  
12 corresponding meaning.

13 (c) “Discover,” “learn,” or words of similar import refer to  
14 knowledge rather than to reason to know.

15 (d) A person “notifies” or “gives” a notice or notification to  
16 another person by taking such steps as may be reasonably  
17 required to inform the other person in ordinary course, whether  
18 or not the other person actually comes to know of it.

19 (e) Subject to subdivision (f), a person “receives” a notice or  
20 notification when:

21 (1) it comes to that person’s attention; or

22 (2) it is duly delivered in a form reasonable under the  
23 circumstances at the place of business through which the contract  
24 was made or at another location held out by that person as the  
25 place ~~for~~ for receipt of such communications.

26 (f) Notice, knowledge, or a notice or notification received by  
27 an organization is effective for a particular transaction from the  
28 time it is brought to the attention of the individual conducting  
29 that transaction and, in any event, from the time it would have  
30 been brought to the individual’s attention if the organization had  
31 exercised due diligence. An organization exercises due diligence  
32 if it maintains reasonable routines for communicating significant  
33 information to the person conducting the transaction and there is  
34 reasonable compliance with the routines. Due diligence does not  
35 require an individual acting for the organization to communicate  
36 information unless the communication is part of the individual’s  
37 regular duties or the individual has reason to know of the  
38 transaction and that the transaction would be materially affected  
39 by the information.

1 SEC. 14. Section 1203 of the Commercial Code is amended  
2 and renumbered to read:

3 1304. Every contract or duty within this code imposes an  
4 obligation of good faith in its performance and enforcement.

5 SEC. 15. Section 1203 is added to the Commercial Code, to  
6 read:

7 1203. (a) Whether a transaction in the form of a lease creates  
8 a lease or security interest is determined by the facts of each case.

9 (b) A transaction in the form of a lease creates a security  
10 interest if the consideration that the lessee is to pay the lessor for  
11 the right to possession and use of the goods is an obligation for  
12 the term of the lease and is not subject to termination by the  
13 lessee, and:

14 (1) the original term of the lease is equal to or greater than the  
15 remaining economic life of the goods;

16 (2) the lessee is bound to renew the lease for the remaining  
17 economic life of the goods or is bound to become the owner of  
18 the goods;

19 (3) the lessee has an option to renew the lease for the  
20 remaining economic life of the goods for no additional  
21 consideration or for nominal additional consideration upon  
22 compliance with the lease agreement; or

23 (4) the lessee has an option to become the owner of the goods  
24 for no additional consideration or for nominal additional  
25 consideration upon compliance with the lease agreement.

26 (c) A transaction in the form of a lease does not create a  
27 security interest merely because:

28 (1) the present value of the consideration the lessee is  
29 obligated to pay the lessor for the right to possession and use of  
30 the goods is substantially equal to or is greater than the fair  
31 market value of the goods at the time the lease is entered into;

32 (2) the lessee assumes risk of loss of the goods;

33 (3) the lessee agrees to pay, with respect to the goods, taxes,  
34 insurance, filing, recording, or registration fees, or service or  
35 maintenance costs;

36 (4) the lessee has an option to renew the lease or to become  
37 the owner of the goods;

38 (5) the lessee has an option to renew the lease for a fixed rent  
39 that is equal to or greater than the reasonably predictable fair

1 market rent for the use of the goods for the term of the renewal at  
2 the time the option is to be performed; or

3 (6) the lessee has an option to become the owner of the goods  
4 for a fixed price that is equal to or greater than the reasonably  
5 predictable fair market value of the goods at the time the option  
6 is to be performed.

7 (d) Additional consideration is nominal if it is less than the  
8 lessee's reasonably predictable cost of performing under the  
9 lease agreement if the option is not exercised. Additional  
10 consideration is not nominal if:

11 (1) when the option to renew the lease is granted to the lessee,  
12 the rent is stated to be the fair market rent for the use of the  
13 goods for the term of the renewal determined at the time the  
14 option is to be performed; or

15 (2) when the option to become the owner of the goods is  
16 granted to the lessee, the price is stated to be the fair market  
17 value of the goods determined at the time the option is to be  
18 performed.

19 (e) The "remaining economic life of the goods" and  
20 "reasonably predictable" fair market rent, fair market value, or  
21 cost of performing under the lease agreement must be determined  
22 with reference to the facts and circumstances at the time the  
23 transaction is entered into.

24 SEC. 16. Section 1204 of the Commercial Code is amended  
25 and renumbered to read:

26 1205. (a) Whether a time for taking an action required by this  
27 code is reasonable depends on the nature, purpose, and  
28 circumstances of the action.

29 (b) An action is taken "seasonably" if it is taken at or within  
30 the time agreed or, if no time is agreed, at or within a reasonable  
31 time.

32 SEC. 17. Section 1204 is added to the Commercial Code, to  
33 read:

34 1204. Except as otherwise provided in Divisions 3, 4, 5, and  
35 6, a person gives value for rights if the person acquires them:

36 (1) in return for a binding commitment to extend credit or for  
37 the extension of immediately available credit, whether or not  
38 drawn upon and whether or not a chargeback is provided for in  
39 the event of difficulties in collection;

1 (2) as security for, or in total or partial satisfaction of, a  
2 preexisting claim;

3 (3) by accepting delivery under a preexisting contract for  
4 purchase; or

5 (4) in return for any consideration sufficient to support a  
6 simple contract.

7 SEC. 18. Section 1205 of the Commercial Code is amended  
8 and renumbered to read:

9 1303. (a) A “course of performance” is a sequence of  
10 conduct between the parties to a particular transaction that exists  
11 if:

12 (1) the agreement of the parties with respect to the transaction  
13 involves repeated occasions for performance by a party; and

14 (2) the other party, with knowledge of the nature of the  
15 performance and opportunity for objection to it, accepts the  
16 performance or acquiesces in it without objection.

17 (b) A “course of dealing” is a sequence of conduct concerning  
18 previous transactions between the parties to a particular  
19 transaction that is fairly to be regarded as establishing a common  
20 basis of understanding for interpreting their expressions and  
21 other conduct.

22 (c) A “usage of trade” is any practice or method of dealing  
23 having such regularity of observance in a place, vocation, or  
24 trade as to justify an expectation that it will be observed with  
25 respect to the transaction in question. The existence and scope of  
26 such a usage must be proved as facts. If it is established that such  
27 a usage is embodied in a trade code or similar record, the  
28 interpretation of the record is a question of law.

29 (d) A course of performance or course of dealing between the  
30 parties or usage of trade in the vocation or trade in which they are  
31 engaged or of which they are or should be aware is relevant in  
32 ascertaining the meaning of the parties’ agreement, may give  
33 particular meaning to specific terms of the agreement, and may  
34 supplement or qualify the terms of the agreement. A usage of  
35 trade applicable in the place in which part of the performance  
36 under the agreement is to occur may be so utilized as to that part  
37 of the performance.

38 (e) Except as otherwise provided in subdivision (f), the  
39 express terms of an agreement and any applicable course of  
40 performance, course of dealing, or usage of trade must be

1 construed whenever reasonable as consistent with each other. If  
2 such a construction is unreasonable  
3 :

4 (1) express terms prevail over course of performance, course  
5 of dealing, and usage of trade;

6 (2) course of performance prevails over course of dealing and  
7 usage of trade;

8 (3) course of dealing prevails over usage of trade.

9 (f) Subject to Section 2209, a course of performance is  
10 relevant to show a waiver or modification of any term  
11 inconsistent with the course of performance.

12 (g) Evidence of a relevant usage of trade offered by one party  
13 is not admissible unless that party has given the other party  
14 notice that the court finds sufficient to prevent unfair surprise to  
15 the other party.

16 SEC. 19. Section 1206 of the Commercial Code is repealed.

17 SEC. 20. Section 1206 is added to the Commercial Code, to  
18 read:

19 1206. Whenever this code creates a “presumption” with  
20 respect to a fact, or provides that a fact is “presumed,” the trier of  
21 fact must find the existence of the fact unless and until evidence  
22 is introduced that supports a finding of its nonexistence.

23 SEC. 21. Section 1207 of the Commercial Code is amended  
24 and renumbered to read:

25 1308. (a) A party that with explicit reservation of rights  
26 performs or promises performance or assents to performance in a  
27 manner demanded or offered by the other party does not thereby  
28 prejudice the rights reserved. Such words as “without prejudice,”  
29 “under protest” or the like are sufficient.

30 (b) Subdivision (a) does not apply to an accord and  
31 satisfaction.

32 SEC. 22. Section 1208 of the Commercial Code is amended  
33 and renumbered to read:

34 1309. A term providing that one party or that party’s  
35 successor in interest may accelerate payment or performance or  
36 require collateral or additional collateral “at will” or when the  
37 party “deems itself insecure,” or words of similar import, means  
38 that the party has power to do so only if that party in good faith  
39 believes that the prospect of payment or performance is impaired.

1 The burden of establishing lack of good faith is on the party  
2 against which the power has been exercised.

3 SEC. 23. Section 1209 of the Commercial Code is amended  
4 and renumbered to read:

5 1310. An obligation may be issued as subordinated to  
6 performance of another obligation of the person obligated, or a  
7 creditor may subordinate its right to performance of an obligation  
8 by agreement with either the person obligated or another creditor  
9 of the person obligated. Subordination does not create a security  
10 interest as against either the common debtor or a subordinated  
11 creditor.

12 SEC. 24. Section 1210 of the Commercial Code is repealed.

13 SEC. 25. Chapter 3 (commencing with Section 1301) is  
14 added to Division 1 of the Commercial Code, to read:

15  
16 CHAPTER 3. TERRITORIAL APPLICABILITY AND GENERAL  
17 RULES  
18

19 ~~1301. (a) In this section:~~

20 ~~(1) "Domestic transaction" means a transaction other than an~~  
21 ~~international transaction.~~

22 ~~(2) "International transaction" means a transaction that bears a~~  
23 ~~reasonable relation to a country other than the United States.~~

24 ~~(b) This section applies to a transaction to the extent that it is~~  
25 ~~governed by another division of this code.~~

26 ~~(c) Except as otherwise provided by this section:~~

27 ~~(1) an agreement by parties to a domestic transaction that any~~  
28 ~~or all of their rights and obligations are to be determined by the~~  
29 ~~law of this state or of another state is effective, whether or not the~~  
30 ~~transaction bears a relation to the state designated; and~~

31 ~~(2) an agreement by parties to an international transaction that~~  
32 ~~any or all of their rights and obligations are to be determined by~~  
33 ~~the law of this state or of another state or country is effective,~~  
34 ~~whether or not the transaction bears a relation to the state or~~  
35 ~~country designated.~~

36 ~~(d) In the absence of an agreement effective under subdivision~~  
37 ~~(c), and except as provided in subdivisions (c) and (g), the rights~~  
38 ~~and obligations of the parties are determined by the law that~~  
39 ~~would be selected by application of the state's conflict of laws~~  
40 ~~principles.~~

~~(e) If one of the parties to a transaction is a consumer, the following rules apply:~~

~~(1) An agreement referred to in subdivision (c) is not effective unless the transaction bears a reasonable relation to the state or country designated.~~

~~(2) Application of the law of the state or country determined pursuant to subdivision (c) or (d) may not deprive the consumer of the protection of any rule of law governing a matter within the scope of this section, which both is protective of consumers and may not be varied by agreement:~~

~~(A) of the state or country in which the consumer principally resides, unless subparagraph (B) applies; or~~

~~(B) if the transaction is a sale of goods, of the state or country in which the consumer both makes the contract and takes delivery of those goods, if such state or country is not the state or country in which the consumer principally resides.~~

~~(f) An agreement otherwise effective under subdivision (c) is not effective to the extent that application of the law of the state or country designated would be contrary to a fundamental policy of the state or country whose law would govern in the absence of agreement under subdivision (d).~~

~~(g) To the extent that this code governs a transaction, if one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:~~

~~(1) Section 2402;~~

~~(2) Sections 10105 and 10106;~~

~~(3) Section 4102;~~

~~(4) Section 11507;~~

~~(5) Section 5116;~~

~~(6) Section 6103;~~

~~(7) Section 8110;~~

~~(8) Sections 9301 to 9307, inclusive.~~

*1301. (a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties.*



1     (b) *In the absence of an agreement effective under subdivision*  
2     (a), *and except as provided in subdivision (c), this code applies*  
3     *to transactions bearing an appropriate relation to this state.*

4     (c) *If one of the following provisions specifies the applicable*  
5     *law, that provision governs and a contrary agreement is effective*  
6     *only to the extent permitted by the law so specified:*

7         (1) *Section 2402.*

8         (2) *Section 4102.*

9         (3) *Section 5116.*

10        (4) *Section 6103.*

11        (5) *Section 8110.*

12        (6) *Sections 9301 to 9307, inclusive.*

13        (7) *Sections 10105 and 10106.*

14        (8) *Section 11507.*

15     1302. (a) Except as otherwise provided in subdivision (b) or  
16     elsewhere in this code, the effect of provisions of this code may  
17     be varied by agreement.

18     (b) The obligations of good faith, diligence, reasonableness,  
19     and care prescribed by this code may not be disclaimed by  
20     agreement. The parties, by agreement, may determine the  
21     standards by which the performance of those obligations is to be  
22     measured if those standards are not manifestly unreasonable.  
23     Whenever this code requires an action to be taken within a  
24     reasonable time, a time that is not manifestly unreasonable may  
25     be fixed by agreement.

26     (c) The presence of certain provisions of this code of the  
27     phrase “unless otherwise agreed,” or words of similar import,  
28     does not imply that the effect of other provisions may not be  
29     varied by agreement under this section.

30     SEC. 26. Section 2103 of the Commercial Code is amended  
31     to read:

32     2103. (1) In this division unless the context otherwise  
33     requires:

34         (a) “Buyer” means a person who buys or contracts to buy  
35         goods.

36         (b) [Reserved]

37         (c) ~~“Receipt of goods”~~ “Receipt of goods” means taking  
38         physical possession of them.

39         (d) “Seller” means a person who sells or contracts to sell  
40         goods.

(2) Other definitions applying to this division or to specified chapters thereof, and the sections in which they appear are:

- “Acceptance.” Section 2606.
- “Banker’s credit.” Section 2325.
- “Between merchants.” Section 2104.
- “Cancellation.” Section 2106(4).
- “Commercial unit.” Section 2105.
- “Confirmed credit.” Section 2325.
- “Conforming to contract.” Section 2106.
- “Contract for sale.” Section 2106.
- “Cover.” Section 2712.
- “Entrusting.” Section 2403.
- “Financing agency.” Section 2104.
- “Future goods.” Section 2105.
- “Goods.” Section 2105.
- “Identification.” Section 2501.
- “Installment contract.” Section 2612.
- “Letter of Credit.” Section 2325.
- “Lot.” Section 2105.
- “Merchant.” Section 2104.
- “Overseas.” Section 2323.
- “Person in position of seller.” Section 2707.
- “Present sale.” Section 2106.
- “Sale.” Section 2106.
- “Sale on approval.” Section 2326.
- “Sale or return.” Section 2326.
- “Termination.” Section 2106.

(3) The following definitions in other divisions apply to this division:

- “Check.” Section 3104.
- “Consignee.” Section 7102.
- “Consignor.” Section 7102.
- “Consumer goods.” Section 9102.
- “Control.” Section 7106.
- “Dishonor.” Section 3502.
- “Draft.” Section 3104.

(4) In addition, Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

1 SEC. 27. Section 2104 of the Commercial Code is amended  
2 to read:

3 2104. (1) “Merchant” means a person who deals in goods of  
4 the kind or otherwise by his occupation holds himself out as  
5 having knowledge or skill peculiar to the practices or goods  
6 involved in the transaction or to whom such knowledge or skill  
7 may be attributed by his employment of an agent or broker or  
8 other intermediary who by his occupation holds himself out as  
9 having such knowledge or skill.

10 (2) “Financing agency” means a bank, finance company or  
11 other person who in the ordinary course of business makes  
12 advances against goods or documents of title or who by  
13 arrangement with either the seller or the buyer intervenes in  
14 ordinary course to make or collect payment due or claimed under  
15 the contract for sale, as by purchasing or paying the seller’s draft  
16 or making advances against it or by merely taking it for  
17 collection whether or not documents of title accompany or are  
18 associated with the draft. “Financing agency” includes also a  
19 bank or other person who similarly intervenes between persons  
20 who are in the position of seller and buyer in respect to the goods  
21 (Section 2707).

22 (3) “Between merchants” means in any transaction with  
23 respect to which both parties are chargeable with the knowledge  
24 or skill of merchants.

25 SEC. 28. Section 2202 of the Commercial Code is amended  
26 to read:

27 2202. Terms with respect to which the confirmatory  
28 memoranda of the parties agree or which are otherwise set forth  
29 in a writing intended by the parties as a final expression of their  
30 agreement with respect to such terms as are included therein may  
31 not be contradicted by evidence of any prior agreement or of a  
32 contemporaneous oral agreement but may be explained or  
33 supplemented

34 (a) By course of dealing, course of performance, or usage of  
35 trade (Section 1303); and

36 (b) By evidence of consistent additional terms unless the court  
37 finds the writing to have been intended also as a complete and  
38 exclusive statement of the terms of the agreement.

39 SEC. 29. Section 2208 of the Commercial Code is repealed.

1 SEC. 30. Section 2310 of the Commercial Code is amended  
2 to read:

3 2310. Unless otherwise agreed:

4 (a) Payment is due at the time and place at which the buyer is  
5 to receive the goods even though the place of shipment is the  
6 place of delivery; and

7 (b) If the seller is authorized to send the goods he may ship  
8 them under reservation, and may tender the documents of title,  
9 but the buyer may inspect the goods after their arrival before  
10 payment is due unless such inspection is inconsistent with the  
11 terms of the contract (Section 2513); and

12 (c) If delivery is authorized and made by way of documents of  
13 title otherwise than by subdivision (b) then payment is due  
14 regardless of where the goods are to be received (i) at the time  
15 and place at which the buyer is to receive delivery of the tangible  
16 documents or (ii) at the time the buyer is to receive delivery of  
17 the electronic documents and at the seller's place of business or if  
18 none, the seller's residence; and

19 (d) Where the seller is required or authorized to ship the goods  
20 on credit the credit period runs from the time of shipment but  
21 postdating the invoice or delaying its dispatch will  
22 correspondingly delay the starting of the credit period.

23 SEC. 31. Section 2323 of the Commercial Code is amended  
24 to read:

25 2323. (1) Where the contract contemplates overseas  
26 shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel,  
27 the seller unless otherwise agreed must obtain a negotiable bill of  
28 lading stating that the goods have been loaded on board or, in the  
29 case of a term C.I.F. or C. & F., received for shipment.

30 (2) Where in a case within subdivision (1) a tangible bill of  
31 lading has been issued in a set of parts, unless otherwise agreed if  
32 the documents are not to be sent from abroad the buyer may  
33 demand tender of the full set; otherwise only one part of the bill  
34 of lading need be tendered. Even if the agreement expressly  
35 requires a full set

36 (a) Due tender of a single part is acceptable within the  
37 provisions of this division on cure of improper delivery  
38 (subdivision (1) of Section 2508); and

39 (b) Even though the full set is demanded, if the documents are  
40 sent from abroad the person tendering an incomplete set may

1 nevertheless require payment upon furnishing an indemnity  
2 which the buyer in good faith deems adequate.

3 (3) A shipment by water or by air or a contract contemplating  
4 such shipment is “overseas” insofar as by usage of trade or  
5 agreement it is subject to the commercial, financing or shipping  
6 practices characteristic of international deepwater commerce.

7 SEC. 32. Section 2401 of the Commercial Code is amended  
8 to read:

9 2401. Each provision of this division with regard to the  
10 rights, obligations and remedies of the seller, the buyer,  
11 purchasers or other third parties applies irrespective of title to the  
12 goods except where the provision refers to such title. Insofar as  
13 situations are not covered by the other provisions of this division  
14 and matters concerning title become material the following rules  
15 apply:

16 (1) Title to goods cannot pass under a contract for sale prior to  
17 their identification to the contract (Section 2501), and unless  
18 otherwise explicitly agreed the buyer acquires by their  
19 identification a special property as limited by this code. Any  
20 retention or reservation by the seller of the title (property) in  
21 goods shipped or delivered to the buyer is limited in effect to a  
22 reservation of a security interest. Subject to these provisions and  
23 to the provisions of the division on secured transactions (Division  
24 9), title to goods passes from the seller to the buyer in any  
25 manner and on any conditions explicitly agreed on by the parties.

26 (2) Unless otherwise explicitly agreed title passes to the buyer  
27 at the time and place at which the seller completes his  
28 performance with reference to the physical delivery of the goods,  
29 despite any reservation of a security interest and even though a  
30 document of title is to be delivered at a different time or place;  
31 and in particular and despite any reservation of a security interest  
32 by the bill of lading

33 (a) If the contract requires or authorizes the seller to send the  
34 goods to the buyer but does not require him to deliver them at  
35 destination, title passes to the buyer at the time and place of  
36 shipment; but

37 (b) If the contract requires delivery at destination, title passes  
38 on tender there.

39 (3) Unless otherwise explicitly agreed where delivery is to be  
40 made without moving the goods,

1 (a) If the seller is to deliver a tangible document of title, title  
2 passes at the time when and the place where he delivers such  
3 documents and if the seller is to deliver an electronic document  
4 of title, title passes when the seller delivers the document; or

5 (b) If the goods are at the time of contracting already  
6 identified and no documents of title are to be delivered, title  
7 passes at the time and place of contracting.

8 (4) A rejection or other refusal by the buyer to receive or  
9 retain the goods, whether or not justified, or a justified revocation  
10 of acceptance revests title to the goods in the seller. Such  
11 reversioning occurs by operation of law and is not a “sale.”

12 SEC. 33. Section 2503 of the Commercial Code is amended  
13 to read:

14 2503. (1) Tender of delivery requires that the seller put and  
15 hold conforming goods at the buyer’s disposition and give the  
16 buyer any notification reasonably necessary to enable him to take  
17 delivery. The manner, time and place for tender are determined  
18 by the agreement and this division, and in particular

19 (a) Tender must be at a reasonable hour, and if it is of goods  
20 they must be kept available for the period reasonably necessary  
21 to enable the buyer to take possession; but

22 (b) Unless otherwise agreed, the buyer must furnish facilities  
23 reasonably suited to the receipt of the goods.

24 (2) Where the case is within the next section respecting  
25 shipment tender requires that the seller comply with its  
26 provisions.

27 (3) Where the seller is required to deliver at a particular  
28 destination tender requires that he comply with subdivision (1)  
29 and also in any appropriate case tender documents as described  
30 in subdivisions (4) and (5) of this section.

31 (4) Where goods are in the possession of a bailee and are to be  
32 delivered without being moved

33 (a) Tender requires that the seller either tender a negotiable  
34 document of title covering such goods or procure  
35 acknowledgment by the bailee of the buyer’s right to possession  
36 of the goods; but

37 (b) Tender to the buyer of a nonnegotiable document of title or  
38 of a record directing the bailee to deliver is sufficient tender  
39 unless the buyer seasonably objects, and except as otherwise  
40 provided in Division 9 (commencing with Section 9101), receipt

1 by the bailee of notification of the buyer's rights fixes those  
2 rights as against the bailee and all third persons; but risk of loss  
3 of the goods and of any failure by the bailee to honor the  
4 nonnegotiable document of title or to obey the direction remains  
5 on the seller until the buyer has had a reasonable time to present  
6 the document or direction, and a refusal by the bailee to honor  
7 the document or to obey the direction defeats the tender.

8 (5) Where the contract requires the seller to deliver documents

9 (a) He must tender all such documents in correct form, except  
10 as provided in this division with respect to bills of lading in a set  
11 (subdivision (2) of Section 2323); and

12 (b) Tender through customary banking channels is sufficient  
13 and dishonor of a draft accompanying or associated with the  
14 documents constitutes nonacceptance or rejection.

15 SEC. 34. Section 2505 of the Commercial Code is amended  
16 to read:

17 2505. (1) Where the seller has identified goods to the  
18 contract by or before shipment:

19 (a) His procurement of a negotiable bill of lading to his own  
20 order or otherwise reserves in him a security interest in the  
21 goods. His procurement of the bill to the order of a financing  
22 agency or of the buyer indicates in addition only the seller's  
23 expectation of transferring that interest to the person named.

24 (b) A nonnegotiable bill of lading to himself or his nominee  
25 reserves possession of the goods as security but except in a case  
26 of conditional delivery (subdivision (2) of Section 2507) a  
27 nonnegotiable bill of lading naming the buyer as consignee  
28 reserves no security interest even though the seller retains  
29 possession or control of the bill of lading.

30 (2) When shipment by the seller with reservation of a security  
31 interest is in violation of the contract for sale it constitutes an  
32 improper contract for transportation within the preceding section  
33 but impairs neither the rights given to the buyer by shipment and  
34 identification of the goods to the contract nor the seller's powers  
35 as a holder of a negotiable document of title.

36 SEC. 35. Section 2506 of the Commercial Code is amended  
37 to read:

38 2506. (1) A financing agency by paying or purchasing for  
39 value a draft which relates to a shipment of goods acquires to the  
40 extent of the payment or purchase and in addition to its own

1 rights under the draft and any document of title securing it any  
2 rights of the shipper in the goods including the right to stop  
3 delivery and the shipper's right to have the draft honored by the  
4 buyer.

5 (2) The right to reimbursement of a financing agency which  
6 has in good faith honored or purchased the draft under  
7 commitment to or authority from the buyer is not impaired by  
8 subsequent discovery of defects with reference to any relevant  
9 document which was apparently regular.

10 SEC. 36. Section 2509 of the Commercial Code is amended  
11 to read:

12 2509. (1) Where the contract requires or authorizes the seller  
13 to ship the goods by carrier

14 (a) If it does not require him to deliver them at a particular  
15 destination, the risk of loss passes to the buyer when the goods  
16 are duly delivered to the carrier even though the shipment is  
17 under reservation (Section 2505); but

18 (b) If it does require him to deliver them at a particular  
19 destination and the goods are there duly tendered while in the  
20 possession of the carrier, the risk of loss passes to the buyer when  
21 the goods are there duly so tendered as to enable the buyer to  
22 take delivery.

23 (2) Where the goods are held by a bailee to be delivered  
24 without being moved, the risk of loss passes to the buyer

25 (a) On his receipt of possession or control of a negotiable  
26 document of title covering the goods; or

27 (b) On acknowledgment by the bailee of the buyer's right to  
28 possession of the goods; or

29 (c) After his receipt of possession or control of a  
30 nonnegotiable document of title or other direction to deliver in a  
31 record, as provided in subdivision (4)(b) of Section 2503.

32 (3) In any case not within subdivision (1) or (2), the risk of  
33 loss passes to the buyer on his receipt of the goods if the seller is  
34 a merchant; otherwise the risk passes to the buyer on tender of  
35 delivery.

36 (4) The provisions of this section are subject to contrary  
37 agreement of the parties and to the provisions of this division on  
38 sale on approval (Section 2327) and on effect of breach on risk of  
39 loss (Section 2510).



1 SEC. 37. Section 2605 of the Commercial Code is amended  
2 to read:

3 2605. (1) The buyer's failure to state in connection with  
4 rejection a particular defect which is ascertainable by reasonable  
5 inspection precludes him from relying on the unstated defect to  
6 justify rejection or to establish breach

7 (a) Where the seller could have cured it if stated seasonably;  
8 or

9 (b) Between merchants when the seller has after rejection  
10 made a request in writing for a full and final written statement of  
11 all defects on which the buyer proposes to rely.

12 (2) Payment against documents made without reservation of  
13 rights precludes recovery of the payment for defects apparent in  
14 the documents.

15 SEC. 38. Section 2705 of the Commercial Code is amended  
16 to read:

17 2705. (1) The seller may stop delivery of goods in the  
18 possession of a carrier or other bailee when he discovers the  
19 buyer to be insolvent (Section 2702) and may stop delivery of  
20 carload, truckload, planeload or larger shipments of express or  
21 freight when the buyer repudiates or fails to make a payment due  
22 before delivery or if for any other reason the seller has a right to  
23 withhold or reclaim the goods.

24 (2) As against such buyer the seller may stop delivery until

25 (a) Receipt of the goods by the buyer; or

26 (b) Acknowledgment to the buyer by any bailee of the goods  
27 except a carrier that the bailee holds the goods for the buyer; or

28 (c) Such acknowledgment to the buyer by a carrier by  
29 reshipment or as a warehouse; or

30 (d) Negotiation to the buyer of any negotiable document of  
31 title covering the goods.

32 (3) (a) To stop delivery the seller must so notify as to enable  
33 the bailee by reasonable diligence to prevent delivery of the  
34 goods.

35 (b) After such notification the bailee must hold and deliver the  
36 goods according to the directions of the seller but the seller is  
37 liable to the bailee for any ensuing charges or damages.

38 (c) If a negotiable document of title has been issued for goods  
39 the bailee is not obliged to obey a notification to stop until  
40 surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

SEC. 39. Section 3103 of the Commercial Code is amended to read:

3103. (a) In this division:

(1) “Acceptor” means a drawee who has accepted a draft.

(2) “Drawee” means a person ordered in a draft to make payment.

(3) “Drawer” means a person who signs or is identified in a draft as a person ordering payment.

(4) [Reserved]

(5) “Maker” means a person who signs or is identified in a note as a person undertaking to pay.

(6) “Order” means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) “Ordinary care” in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank’s prescribed procedures and the bank’s procedures do not vary unreasonably from general banking usage not disapproved by this division or Division 4 (commencing with Section 4101).

(8) “Party” means a party to an instrument.

(9) “Promise” means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) “Prove” with respect to a fact means to meet the burden of establishing the fact (paragraph (8) of subdivision (b) of Section 1201).

(11) “Remitter” means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this division and the sections in which they appear are:

“Acceptance”	Section 3409
“Accommodated party”	Section 3419
“Accommodation party”	Section 3419
“Alteration”	Section 3407
“Anomalous endorsement”	Section 3205
“Blank endorsement”	Section 3205
“Cashier’s check”	Section 3104
“Certificate of deposit”	Section 3104
“Certified check”	Section 3409
“Check”	Section 3104
“Consideration”	Section 3303
“Demand Draft”	Section 3104
“Draft”	Section 3104
“Holder in due course”	Section 3302
“Incomplete instrument”	Section 3115
“Indorsement”	Section 3204
“Indorser”	Section 3204
“Instrument”	Section 3104
“Issue”	Section 3105
“Issuer”	Section 3105
“Negotiable instrument”	Section 3104
“Negotiation”	Section 3201
“Note”	Section 3104
“Payable at a definite time”	Section 3108
“Payable on demand”	Section 3108
“Payable to bearer”	Section 3109
“Payable to order”	Section 3109
“Payment”	Section 3602
“Person entitled to enforce”	Section 3301
“Presentment”	Section 3501
“Reacquisition”	Section 3207
“Special indorsement”	Section 3205
“Teller’s check”	Section 3104
“Transfer of instrument”	Section 3203

1 “Traveler’s check” Section 3104  
2 “Value” Section 3303

3  
4 (c) The following definitions in other divisions apply to this  
5 division:

6  
7 “Bank” Section 4105  
8 “Banking day” Section 4104  
9 “Clearinghouse” Section 4104  
10 “Collecting bank” Section 4105  
11 “Depository bank” Section 4105  
12 “Documentary draft” Section 4104  
13 “Intermediary bank” Section 4105  
14 “Item” Section 4104  
15 “Payor bank” Section 4105  
16 “Suspends payments” Section 4104

17  
18 (d) In addition, Division 1 (commencing with Section 1101)  
19 contains general definitions and principles of construction and  
20 interpretation applicable throughout this division.

21 SEC. 40. Section 4104 of the Commercial Code is amended  
22 to read:

23 4104. (a) In this division unless the context otherwise  
24 requires:

25 (1) “Account” means any deposit or credit account with a  
26 bank, including a demand, time, savings, passbook, share draft,  
27 or like account, other than an account evidenced by a certificate  
28 of deposit.

29 (2) “Afternoon” means the period of a day between noon and  
30 midnight.

31 (3) “Banking day” means the part of a day on which a bank is  
32 open to the public for carrying on substantially all of its banking  
33 functions.

34 (4) “Clearinghouse” means an association of banks or other  
35 payors regularly clearing items.

36 (5) “Customer” means a person having an account with a bank  
37 or for whom a bank has agreed to collect items, including a bank  
38 that maintains an account at another bank.

39 (6) “Documentary draft” means a draft to be presented for  
40 acceptance or payment if specified documents, certificated

securities (Section 8102) or instructions for uncertificated securities (Section 8102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) “Draft” means a draft as defined in Section 3104 or an item, other than an instrument, that is an order.

(8) “Drawee” means a person ordered in a draft to make payment.

(9) “Item” means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Division 11 (commencing with Section 11101) or a credit or debit card slip.

(10) “Midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) “Settle” means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(12) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this division and the sections in which they appear are:

“Agreement for electronic presentment”	Section 4110
“Bank”	Section 4105
“Collecting bank”	Section 4105
“Depository bank”	Section 4105
“Intermediary bank”	Section 4105
“Payor bank”	Section 4105
“Presenting bank”	Section 4105
“Presentment notice”	Section 4110

(c) The following definitions in other divisions apply to this division:

“Acceptance”	Section 3409
“Alteration”	Section 3407

1	“Cashier’s check”	Section 3104
2	“Certificate of deposit”	Section 3104
3	“Certified check”	Section 3409
4	“Check”	Section 3104
5	“Control”	Section 7106
6		
7	“Holder in due course”	Section 3302
8	“Instrument”	Section 3104
9	“Notice of dishonor”	Section 3503
10	“Order”	Section 3103
11	“Ordinary care”	Section 3103
12	“Person entitled to enforce”	Section 3301
13	“Presentment”	Section 3501
14	“Promise”	Section 3103
15	“Prove”	Section 3103
16	“Teller’s check”	Section 3104
17	“Unauthorized signature”	Section 3403
18		

19 (d) In addition, Division 1 (commencing with Section 1101)  
20 contains general definitions and principles of construction and  
21 interpretation applicable throughout this division.

22 SEC. 41. Section 4210 of the Commercial Code is amended  
23 to read:

24 4210. (a) A collecting bank has a security interest in an item  
25 and any accompanying documents or the proceeds of either:

26 (1) In case of an item deposited in an account to the extent to  
27 which credit given for the item has been withdrawn or applied.

28 (2) In case of an item for which it has given credit available  
29 for withdrawal as of right, to the extent of the credit given,  
30 whether or not the credit is drawn upon or there is a right of  
31 chargeback.

32 (3) If it makes an advance on or against the item.

33 (b) If credit given for several items received at one time or  
34 pursuant to a single agreement is withdrawn or applied in part,  
35 the security interest remains upon all the items, any  
36 accompanying documents or the proceeds of either. For the  
37 purpose of this section, credits first given are first withdrawn.

38 (c) Receipt by a collecting bank of a final settlement for an  
39 item is a realization on its security interest in the item,  
40 accompanying documents, and proceeds. So long as the bank

1 does not receive final settlement for the item or give up  
2 possession of the item or possession or control of the  
3 accompanying documents for purposes other than collection, the  
4 security interest continues to that extent and is subject to  
5 Division 9 (commencing with Section 9101), but all of the  
6 following are applicable:

7 (1) No security agreement is necessary to make the security  
8 interest enforceable (subparagraph (A) of paragraph (3) of  
9 subdivision (b) of Section 9203).

10 (2) No filing is required to perfect the security interest.

11 (3) The security interest has priority over conflicting perfected  
12 security interests in the item, accompanying documents, or  
13 proceeds.

14 SEC. 42. Section 5103 of the Commercial Code is amended  
15 to read:

16 5103. (a) This division applies to letters of credit and to  
17 certain rights and obligations arising out of transactions  
18 involving letters of credit.

19 (b) The statement of a rule in this division does not by itself  
20 require, imply, or negate application of the same or a different  
21 rule to a situation not provided for, or to a person not specified,  
22 in this division.

23 (c) With the exception of this subdivision, subdivisions (a) and  
24 (d), paragraphs 9 and 10 of subdivision (a) of Section 5102,  
25 subdivision (d) of Section 5106, and subdivision (d) of Section  
26 5114, and except to the extent prohibited in Section 1302 and  
27 subdivision (d) of Section 5117, the effect of this division may be  
28 varied by agreement or by a provision stated or incorporated by  
29 reference in an undertaking. A term in an agreement or  
30 undertaking generally excusing liability or generally limiting  
31 remedies for failure to perform obligations is not sufficient to  
32 vary obligations prescribed by this division.

33 (d) Rights and obligations of an issuer to a beneficiary or a  
34 nominated person under a letter of credit are independent of the  
35 existence, performance, or nonperformance of a contract or  
36 arrangement out of which the letter of credit arises or which  
37 underlies it, including contracts or arrangements between the  
38 issuer and the applicant and between the applicant and the  
39 beneficiary.

1 SEC. 43. Division 7 (commencing with Section 7101) of the  
2 Commercial Code is repealed.

3 SEC. 44. Division 7 (commencing with Section 7101) is  
4 added to the Commercial Code, to read:

5  
6 DIVISION 7. DOCUMENTS OF TITLE

7  
8 CHAPTER 1. GENERAL

9  
10 7101. This division may be cited as *the* Uniform Commercial  
11 Code—Documents of Title.

12 7102. (a) In this division, unless the context otherwise  
13 requires:

14 (1) “Bailee” means a person that by a warehouse receipt, bill  
15 of lading, or other document of title acknowledges possession of  
16 goods and contracts to deliver them.

17 (2) “Carrier” means a person that issues a bill of lading.

18 (3) “Consignee” means a person named in a bill of lading to  
19 which or to whose order the bill promises delivery.

20 (4) “Consignor” means a person named in a bill of lading as  
21 the person from which the goods have been received for  
22 shipment.

23 (5) “Delivery order” means a record that contains an order to  
24 deliver goods directed to a warehouse, carrier, or other person  
25 that in the ordinary course of business issues warehouse receipts  
26 or bills of lading.

27 (6) “Good faith” means honesty in fact and the observance of  
28 reasonable commercial standards of fair dealing.

29 (7) “Goods” means all things that are treated as movable for  
30 the purposes of a contract for storage or transportation.

31 (8) “Issuer” means a bailee that issues a document of title or,  
32 in the case of an unaccepted delivery order, the person that orders  
33 the possessor of goods to deliver. The term includes a person for  
34 which an agent or employee purports to act in issuing a document  
35 if the agent or employee has real or apparent authority to issue  
36 documents, even if the issuer did not receive any goods, the  
37 goods were misdescribed, or in any other respect the agent or  
38 employee violated the issuer’s instructions.

39 (9) “Person entitled under the document” means the holder, in  
40 the case of a negotiable document of title, or the person to which



1 delivery of the goods is to be made by the terms of, or pursuant  
2 to instructions in a record under, a nonnegotiable document of  
3 title.

4 (10) “Record” means information that is inscribed on a  
5 tangible medium or that is stored in an electronic or other  
6 medium and is retrievable in perceivable form.

7 (11) “Sign” means, with present intent to authenticate or adopt  
8 a record:

9 (A) to execute or adopt a tangible symbol; or

10 (B) to attach to or logically associate with the record an  
11 electronic sound, symbol, or process.

12 (12) “Shipper” means a person that enters into a contract of  
13 transportation with a carrier.

14 (13) “Warehouse” means a person engaged in the business of  
15 storing goods for hire.

16 (b) Definitions in other divisions applying to this division and  
17 the sections in which they appear are:

18 (1) “Contract for sale,” Section 2106.

19 (2) “Lessee in the ordinary course of ~~business~~,” *business*,”  
20 Section 10103.

21 (3) ~~“Receipt of goods,”~~ *“Receipt of goods,”* Section 2103.

22 (c) In addition, Division 1 (commencing with Section 1101)  
23 contains general definitions and principles of construction and  
24 interpretation applicable throughout this division.

25 7103. (a) This division is subject to any treaty or statute of  
26 the United States or regulatory statute of this state to the extent  
27 the treaty, statute, or regulatory statute is applicable.

28 (b) This division does not modify or repeal any law  
29 prescribing the form or content of a document of title or the  
30 services or facilities to be afforded by a bailee, or otherwise  
31 regulating a bailee’s business in respects not specifically treated  
32 in this division. However, violation of such a law does not affect  
33 the status of a document of title that otherwise is within the  
34 definition of a document of title.

35 (c) This division modifies, limits, and supersedes the federal  
36 Electronic Signatures in Global and National Commerce Act (15  
37 U.S.C. Sec. 7001, et seq.) but does not modify, limit, or  
38 supersede Section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or  
39 authorize electronic delivery of any of the notices described in  
40 Section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code) and this division, this division governs.

7104. (a) Except as otherwise provided in subdivision (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subdivision (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

7105. (a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subdivision (a):

(1) the electronic document ceases to have any effect or validity; and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

1 (2) the electronic document when issued contains a statement  
2 that it is issued in substitution for the tangible document.

3 (d) Upon issuance of an electronic document of title in  
4 substitution for a tangible document of title in accordance with  
5 subdivision (c):

6 (1) the tangible document ceases to have any effect or validity;  
7 and

8 (2) the person that procured issuance of the electronic  
9 document warrants to all subsequent persons entitled under the  
10 electronic document that the warrantor was a person entitled  
11 under the tangible document when the warrantor surrendered  
12 possession of the tangible document to the issuer.

13 7106. (a) A person has control of an electronic document of  
14 title if a system employed for evidencing the transfer of interests  
15 in the electronic document reliably establishes that person as the  
16 person to which the electronic document was issued or  
17 transferred.

18 (b) A system satisfies subdivision (a), and a person is deemed  
19 to have control of an electronic document of title, if the  
20 document is created, stored, and assigned in such a manner that:

21 (1) a single authoritative copy of the document exists which is  
22 unique, identifiable, and, except as otherwise provided in  
23 paragraphs (4), (5), and (6), unalterable;

24 (2) the authoritative copy identifies the person asserting  
25 control as:

26 (A) the person to which the document was issued; or

27 (B) if the authoritative copy indicates that the document has  
28 been transferred, the person to which the document was most  
29 recently transferred;

30 (3) the authoritative copy is communicated to and maintained  
31 by the person asserting control or its designated custodian;

32 (4) copies or amendments that add or change an identified  
33 assignee of the authoritative copy can be made only with the  
34 consent of the person asserting control;

35 (5) each copy of the authoritative copy and any copy of a copy  
36 is readily identifiable as a copy that is not the authoritative copy;  
37 and

38 (6) any amendment of the authoritative copy is readily  
39 identifiable as authorized or unauthorized.

## CHAPTER 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

7201. (a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

7202. (a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the provisions of this code and do not impair its

1 obligation of delivery under Section 7403 or its duty of care  
2 under Section 7204. Any contrary provision is ineffective.

3 7203. A party to or purchaser for value in good faith of a  
4 document of title, other than a bill of lading, that relies upon the  
5 description of the goods in the document may recover from the  
6 issuer damages caused by the nonreceipt or misdescription of the  
7 goods, except to the extent that:

8 (1) the document conspicuously indicates that the issuer does  
9 not know whether all or part of the goods in fact were received or  
10 conform to the description, such as a case in which the  
11 description is in terms of marks or labels or kind, quantity, or  
12 condition, or the receipt or description is qualified by “contents,  
13 condition, and quality unknown,” “said to contain,” or words of  
14 similar import, if the indication is true; or

15 (2) the party or purchaser otherwise has notice of the  
16 nonreceipt or misdescription.

17 7204. (a) A warehouse is liable for damages for loss of or  
18 injury to the goods caused by its failure to exercise care with  
19 regard to the goods that a reasonably careful person would  
20 exercise under similar circumstances. Unless otherwise agreed,  
21 the warehouse is not liable for damages that could not have been  
22 avoided by the exercise of that care.

23 (b) Damages may be limited by a term in the warehouse  
24 receipt or storage agreement limiting the amount of liability in  
25 case of loss or damage beyond which the warehouse is not liable.  
26 Such a limitation is not effective with respect to the warehouse’s  
27 liability for conversion to its own use. On request of the bailor in  
28 a record at the time of signing the storage agreement or within a  
29 reasonable time after receipt of the warehouse receipt, the  
30 warehouse’s liability may be increased on part or all of the goods  
31 covered by the storage agreement or the warehouse receipt. In  
32 this event, increased rates may be charged based on an increased  
33 valuation of the goods.

34 (c) Reasonable provisions as to the time and manner of  
35 presenting claims and commencing actions based on the bailment  
36 may be included in the warehouse receipt or storage agreement.

37 (d) This section does not modify or repeal Section 1630 of the  
38 Civil Code nor any of the provisions of the Public Utilities Code  
39 or the Food and Agricultural Code or any lawful regulations  
40 issued thereunder.

1     7205. A buyer in ordinary course of business of fungible  
2 goods sold and delivered by a warehouse that is also in the  
3 business of buying and selling such goods takes the goods free of  
4 any claim under a warehouse receipt even if the receipt is  
5 negotiable and has been duly negotiated.

6     7206. (a) A warehouse, by giving notice to the person on  
7 whose account the goods are held and any other person known to  
8 claim an interest in the goods, may require payment of any  
9 charges and removal of the goods from the warehouse at the  
10 termination of the period of storage fixed by the document of title  
11 or, if a period is not fixed, within a stated period not less than 30  
12 days after the warehouse gives notice. If the goods are not  
13 removed before the date specified in the notice, the warehouse  
14 may sell them pursuant to Section 7210.

15     (b) If a warehouse in good faith believes that goods are about  
16 to deteriorate or decline in value to less than the amount of its  
17 lien within the time provided in subdivision (a) and Section 7210,  
18 the warehouse may specify in the notice given under subdivision  
19 (a) any reasonable shorter time for removal of the goods and, if  
20 the goods are not removed, may sell them at public sale held not  
21 less than one week after a single advertisement or posting.

22     (c) If, as a result of a quality or condition of the goods of  
23 which the warehouse did not have notice at the time of deposit,  
24 the goods are a hazard to other property, the warehouse facilities,  
25 or other persons, the warehouse may sell the goods at public or  
26 private sale without advertisement or posting on reasonable  
27 notification to all persons known to claim an interest in the  
28 goods. If the warehouse, after a reasonable effort, is unable to  
29 sell the goods, it may dispose of them in any lawful manner and  
30 does not incur liability by reason of that disposition.

31     (d) A warehouse shall deliver the goods to any person entitled  
32 to them under this division upon due demand made at any time  
33 before sale or other disposition under this section.

34     (e) A warehouse may satisfy its lien from the proceeds of any  
35 sale or disposition under this section but shall hold the balance  
36 for delivery on the demand of any person to which the warehouse  
37 would have been bound to deliver the goods.

38     7207. (a) Unless the warehouse receipt provides otherwise, a  
39 warehouse shall keep separate the goods covered by each receipt  
40 so as to permit at all times identification and delivery of those

1 goods. However, different lots of fungible goods may be  
2 commingled.

3 (b) If different lots of fungible goods are commingled, the  
4 goods are owned in common by the persons entitled thereto and  
5 the warehouse is severally liable to each owner for that owner's  
6 share. If, because of overissue, a mass of fungible goods is  
7 insufficient to meet all the receipts the warehouse has issued  
8 against it, the persons entitled include all holders to which  
9 overissued receipts have been duly negotiated.

10 7208. If a blank in a negotiable tangible warehouse receipt  
11 has been filled in without authority, a good-faith purchaser for  
12 value and without notice of the lack of authority may treat the  
13 insertion as authorized. Any other unauthorized alteration leaves  
14 any tangible or electronic warehouse receipt enforceable against  
15 the issuer according to its original tenor.

16 7209. (a) A warehouse has a lien against the bailor on the  
17 goods covered by a warehouse receipt or storage agreement or on  
18 the proceeds thereof in its possession for charges for storage or  
19 transportation, including demurrage and terminal charges,  
20 insurance, labor, or other charges, present or future, in relation to  
21 the goods, and for expenses necessary for preservation of the  
22 goods or reasonably incurred in their sale pursuant to law. If the  
23 person on whose account the goods are held is liable for similar  
24 charges or expenses in relation to other goods whenever  
25 deposited and it is stated in the warehouse receipt or storage  
26 agreement that a lien is claimed for charges and expenses in  
27 relation to other goods, the warehouse also has a lien against the  
28 goods covered by the warehouse receipt or storage agreement or  
29 on the proceeds thereof in its possession for those charges and  
30 expenses, whether or not the other goods have been delivered by  
31 the warehouse. However, as against a person to which a  
32 negotiable warehouse receipt is duly negotiated, a warehouse's  
33 lien is limited to charges in an amount or at a rate specified in the  
34 warehouse receipt or, if no charges are so specified, to a  
35 reasonable charge for storage of the specific goods covered by  
36 the receipt subsequent to the date of the receipt.

37 (b) A warehouse may also reserve a security interest against  
38 the bailor for the maximum amount specified on the receipt for  
39 charges other than those specified in subdivision (a), such as for

1 money advanced and interest. The security interest is governed  
2 by Division 9 (commencing with Section 9101).

3 (c) A warehouse's lien for charges and expenses under  
4 subdivision (a) or a security interest under subdivision (b) is also  
5 effective against any person that so entrusted the bailor with  
6 possession of the goods that a pledge of them by the bailor to a  
7 good-faith purchaser for value would have been valid. However,  
8 the lien or security interest is not effective against a person that  
9 before issuance of a document of title had a legal interest or a  
10 perfected security interest in the goods and that did not:

11 (1) deliver or entrust the goods or any document of title  
12 covering the goods to the bailor or the bailor's nominee with:

13 (A) actual or apparent authority to ship, store, or sell;

14 (B) power to obtain delivery under Section 7403; or

15 (C) power of disposition under Section 2403 or 9320 or  
16 subdivision (c) of Section 9321 or subdivision (b) of Section  
17 10304 or subdivision (b) of Section 10305 or other statute or rule  
18 of law; or

19 (2) acquiesce in the procurement by the bailor or its nominee  
20 of any document.

21 (d) A warehouse's lien on household goods for charges and  
22 expenses in relation to the goods under subdivision (a) is also  
23 effective against all persons if the depositor was the legal  
24 possessor of the goods at the time of deposit. In this subdivision,  
25 "household goods" means furniture, furnishings, or personal  
26 effects used by the depositor in a dwelling.

27 (e) A warehouse loses its lien on any goods that it voluntarily  
28 delivers or unjustifiably refuses to deliver.

29 7210. (a) Except as otherwise provided in subdivision (b), a  
30 warehouse's lien may be enforced by public or private sale of the  
31 goods, in bulk or in packages, at any time or place and on any  
32 terms that are commercially reasonable, after notifying all  
33 persons known to claim an interest in the goods. *Notification may*  
34 *be made by mail, personal service, or verifiable electronic mail.*  
35 The notification must include a statement of the amount due, the  
36 nature of the proposed sale, and the time and place of any public  
37 sale. The fact that a better price could have been obtained by a  
38 sale at a different time or in a method different from that selected  
39 by the warehouse is not of itself sufficient to establish that the  
40 sale was not made in a commercially reasonable manner. The



1 warehouse sells in a commercially reasonable manner if the  
2 warehouse sells the goods in the usual manner in any recognized  
3 market ~~therefore~~ *therefor*, sells at the price current in that market  
4 at the time of the sale, or otherwise sells in conformity with  
5 commercially reasonable practices among dealers in the type of  
6 goods sold. A sale of more goods than apparently necessary to be  
7 offered to ensure satisfaction of the obligation is not  
8 commercially reasonable, except in cases covered by the  
9 preceding sentence.

10 (b) A warehouse may enforce its lien on goods, other than  
11 goods stored by a merchant in the course of its business, only if  
12 the following requirements are satisfied:

13 (1) All persons known to claim an interest in the goods must  
14 be notified.

15 (2) The notification must include an itemized statement of the  
16 claim, a description of the goods subject to the lien, a demand for  
17 payment within a specified time not less than 10 days after  
18 receipt of the notification, and a conspicuous statement that  
19 unless the claim is paid within that time the goods will be  
20 advertised for sale and sold by auction at a specified time and  
21 place.

22 (3) The sale must conform to the terms of the notification.

23 (4) The sale must be held at the nearest suitable place to where  
24 the goods are held or stored.

25 (5) After the expiration of the time given in the notification, an  
26 advertisement of the sale must be published once a week for two  
27 weeks consecutively in a newspaper of general circulation where  
28 the sale is to be held. The advertisement must include a  
29 description of the goods, the name of the person on whose  
30 account the goods are being held, and the time and place of the  
31 sale. The sale must take place at least 15 days after the first  
32 publication. If there is no newspaper of general circulation where  
33 the sale is to be held, the advertisement must be posted at least 10  
34 days before the sale in not fewer than six conspicuous places in  
35 the neighborhood of the proposed sale.

36 (c) Before any sale pursuant to this section, any person  
37 claiming a right in the goods may pay the amount necessary to  
38 satisfy the lien and the reasonable expenses incurred in  
39 complying with this section. In that event, the goods may not be

1 sold but must be retained by the warehouse subject to the terms  
2 of the receipt and this division.

3 (d) A warehouse may buy at any public sale held pursuant to  
4 this section.

5 (e) A purchaser in good faith of goods sold to enforce a  
6 warehouse's lien takes the goods free of any rights of persons  
7 against which the lien was valid, despite the warehouse's  
8 noncompliance with this section.

9 (f) A warehouse may satisfy its lien from the proceeds of any  
10 sale pursuant to this section but shall hold the balance, if any, for  
11 delivery on demand to any person to which the warehouse would  
12 have been bound to deliver the goods.

13 (g) The rights provided by this section are in addition to all  
14 other rights allowed by law to a creditor against a debtor.

15 (h) If a lien is on goods stored by a merchant in the course of  
16 its business, the lien may be enforced in accordance with  
17 subdivision (a) or (b).

18 (i) A warehouse is liable for damages caused by failure to  
19 comply with the requirements for sale under this section and, in  
20 case of willful violation, is liable for conversion.

21  
22 CHAPTER 3. BILLS OF LADING: SPECIAL PROVISIONS  
23

24 7301. (a) A consignee of a nonnegotiable bill of lading  
25 which has given value in good faith, or a holder to which a  
26 negotiable bill has been duly negotiated, relying upon the  
27 description of the goods in the bill or upon the date shown in the  
28 bill, may recover from the issuer damages caused by the  
29 misdating of the bill or the nonreceipt or misdescription of the  
30 goods, except to the extent that the bill indicates that the issuer  
31 does not know whether any part or all of the goods in fact were  
32 received or conform to the description, such as in a case in which  
33 the description is in terms of marks or labels or kind, quantity, or  
34 condition or the receipt or description is qualified by "contents or  
35 condition of contents of packages unknown," "said to contain,"  
36 "shipper's weight, load, and count," or words of similar import,  
37 if that indication is true.

38 (b) If goods are loaded by the issuer of a bill of lading:

1 (1) the issuer shall count the packages of goods if shipped in  
2 packages and ascertain the kind and quantity if shipped in bulk;  
3 and

4 (2) words such as “shipper’s weight, load, and count,” or  
5 words of similar import indicating that the description was made  
6 by the shipper are ineffective except as to goods concealed in  
7 packages.

8 (c) If bulk goods are loaded by a shipper that makes available  
9 to the issuer of a bill of lading adequate facilities for weighing  
10 those goods, the issuer shall ascertain the kind and quantity  
11 within a reasonable time after receiving the shipper’s request in a  
12 record to do so. In that case, “shipper’s weight” or words of  
13 similar import are ineffective.

14 (d) The issuer of a bill of lading, by including in the bill the  
15 words “shipper’s weight, load, and count,” or words of similar  
16 import, may indicate that the goods were loaded by the shipper,  
17 and, if that statement is true, the issuer is not liable for damages  
18 caused by the improper loading. However, omission of such  
19 words does not imply liability for damages caused by improper  
20 loading.

21 (e) A shipper guarantees to an issuer the accuracy at the time  
22 of shipment of the description, marks, labels, number, kind,  
23 quantity, condition, and weight, as furnished by the shipper, and  
24 the shipper shall indemnify the issuer against damage caused by  
25 inaccuracies in those particulars. This right of indemnity does not  
26 limit the issuer’s responsibility or liability under the contract of  
27 carriage to any person other than the shipper.

28 7302. (a) The issuer of a through bill of lading, or other  
29 document of title embodying an undertaking to be performed in  
30 part by a person acting as its agent or by a performing carrier, is  
31 liable to any person entitled to recover on the bill or other  
32 document for any breach by the other person or the performing  
33 carrier of its obligation under the bill or other document.  
34 However, to the extent that the bill or other document covers an  
35 undertaking to be performed overseas or in territory not  
36 contiguous to the continental United States or an undertaking  
37 including matters other than transportation, this liability for  
38 breach by the other person or the performing carrier may be  
39 varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subdivision (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

7303. (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subdivision (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

1 7304. (a) Except as customary in international transportation,  
2 a tangible bill of lading may not be issued in a set of parts. The  
3 issuer is liable for damages caused by violation of this  
4 subdivision.

5 (b) If a tangible bill of lading is lawfully issued in a set of  
6 parts, each of which contains an identification code and is  
7 expressed to be valid only if the goods have not been delivered  
8 against any other part, the whole of the parts constitutes one bill.

9 (c) If a tangible negotiable bill of lading is lawfully issued in a  
10 set of parts and different parts are negotiated to different persons,  
11 the title of the holder to which the first due negotiation is made  
12 prevails as to both the document of title and the goods even if  
13 any later holder may have received the goods from the carrier in  
14 good faith and discharged the carrier's obligation by surrendering  
15 its part.

16 (d) A person that negotiates or transfers a single part of a  
17 tangible bill of lading issued in a set is liable to holders of that  
18 part as if it were the whole set.

19 (e) The bailee shall deliver in accordance with Chapter 4  
20 (commencing with Section 7401) against the first presented part  
21 of a tangible bill of lading lawfully issued in a set. Delivery in  
22 this manner discharges the bailee's obligation on the whole bill.

23 7305. (a) Instead of issuing a bill of lading to the consignor  
24 at the place of shipment, a carrier, at the request of the consignor,  
25 may procure the bill to be issued at destination or at any other  
26 place designated in the request.

27 (b) Upon request of any person entitled as against a carrier to  
28 control the goods while in transit and on surrender of possession  
29 or control of any outstanding bill of lading or other receipt  
30 covering the goods, the issuer, subject to Section 7105, may  
31 procure a substitute bill to be issued at any place designated in  
32 the request.

33 7306. An unauthorized alteration or filling in of a blank in a  
34 bill of lading leaves the bill enforceable according to its original  
35 tenor.

36 7307. (a) A carrier has a lien on the goods covered by a bill  
37 of lading or on the proceeds thereof in its possession for charges  
38 after the date of the carrier's receipt of the goods for storage or  
39 transportation, including demurrage and terminal charges, and for  
40 expenses necessary for preservation of the goods incident to their

1 transportation or reasonably incurred in their sale pursuant to  
2 law. However, against a purchaser for value of a negotiable bill  
3 of lading, a carrier's lien is limited to charges stated in the bill or  
4 the applicable tariffs or, if no charges are stated, a reasonable  
5 charge.

6 (b) A lien for charges and expenses under subdivision (a) on  
7 goods that the carrier was required by law to receive for  
8 transportation is effective against the consignor or any person  
9 entitled to the goods unless the carrier had notice that the  
10 consignor lacked authority to subject the goods to those charges  
11 and expenses. Any other lien under subdivision (a) is effective  
12 against the consignor and any person that permitted the bailor to  
13 have control or possession of the goods unless the carrier had  
14 notice that the bailor lacked authority.

15 (c) A carrier loses its lien on any goods that it voluntarily  
16 delivers or unjustifiably refuses to deliver.

17 7308. (a) A carrier's lien on goods may be enforced by  
18 public or private sale of the goods, in bulk or in packages, at any  
19 time or place and on any terms that are commercially reasonable,  
20 after notifying all persons known to claim an interest in the  
21 goods. The notification must include a statement of the amount  
22 due, the nature of the proposed sale, and the time and place of  
23 any public sale. The fact that a better price could have been  
24 obtained by a sale at a different time or in a method different  
25 from that selected by the carrier is not of itself sufficient to  
26 establish that the sale was not made in a commercially reasonable  
27 manner. The carrier sells goods in a commercially reasonable  
28 manner if the carrier sells the goods in the usual manner in any  
29 recognized market therefor, sells at the price current in that  
30 market at the time of the sale, or otherwise sells in conformity  
31 with commercially reasonable practices among dealers in the  
32 type of goods sold. A sale of more goods than apparently  
33 necessary to be offered to ensure satisfaction of the obligation is  
34 not commercially reasonable, except in cases covered by the  
35 preceding sentence.

36 (b) Before any sale pursuant to this section, any person  
37 claiming a right in the goods may pay the amount necessary to  
38 satisfy the lien and the reasonable expenses incurred in  
39 complying with this section. In that event, the goods may not be

1 sold but must be retained by the carrier, subject to the terms of  
2 the bill of lading and this division.

3 (c) A carrier may buy at any public sale pursuant to this  
4 section.

5 (d) A purchaser in good faith of goods sold to enforce a  
6 carrier's lien takes the goods free of any rights of persons against  
7 which the lien was valid, despite the carrier's noncompliance  
8 with this section.

9 (e) A carrier may satisfy its lien from the proceeds of any sale  
10 pursuant to this section but shall hold the balance, if any, for  
11 delivery on demand to any person to which the carrier would  
12 have been bound to deliver the goods.

13 (f) The rights provided by this section are in addition to all  
14 other rights allowed by law to a creditor against a debtor.

15 (g) A carrier's lien may be enforced pursuant to either  
16 subdivision (a) or the procedure set forth in subdivision (b) of  
17 Section 7210.

18 (h) A carrier is liable for damages caused by failure to comply  
19 with the requirements for sale under this section and, in case of  
20 willful violation, is liable for conversion.

21 7309. (a) A carrier that issues a bill of lading, whether  
22 negotiable or nonnegotiable, shall exercise the degree of care in  
23 relation to the goods which a reasonably careful person would  
24 exercise under similar circumstances. This subdivision does not  
25 affect any statute, regulation, or rule of law that imposes liability  
26 upon a common carrier for damages not caused by its negligence.

27 (b) Damages may be limited by a term in the bill of lading or  
28 in a transportation agreement that the carrier's liability may not  
29 exceed a value stated in the bill or transportation agreement if the  
30 carrier's rates are dependent upon value and the consignor is  
31 afforded an opportunity to declare a higher value and the  
32 consignor is advised of the opportunity. However, such a  
33 limitation is not effective with respect to the carrier's liability for  
34 conversion to its own use.

35 (c) Reasonable provisions as to the time and manner of  
36 presenting claims and commencing actions based on the  
37 shipment may be included in a bill of lading or a transportation  
38 agreement.

1 CHAPTER 4. WAREHOUSE RECEIPTS AND BILLS OF LADING:  
2 GENERAL OBLIGATIONS  
3

4 7401. The obligations imposed by this division on an issuer  
5 apply to a document of title even if:

6 (1) the document does not comply with the requirements of  
7 this division or of any other statute, rule, or regulation regarding  
8 its issuance, form, or content;

9 (2) the issuer violated laws regulating the conduct of its  
10 business;

11 (3) the goods covered by the document were owned by the  
12 bailee when the document was issued; or

13 (4) the person issuing the document is not a warehouse but the  
14 document purports to be a warehouse receipt.

15 7402. A duplicate or any other document of title purporting to  
16 cover goods already represented by an outstanding document of  
17 the same issuer does not confer any right in the goods, except as  
18 provided in the case of tangible bills of lading in a set of parts,  
19 overissue of documents for fungible goods, substitutes for lost,  
20 stolen, or destroyed documents, or substitute documents issued  
21 pursuant to Section 7105. The issuer is liable for damages caused  
22 by its overissue or failure to identify a duplicate document by a  
23 conspicuous notation.

24 7403. (a) A bailee shall deliver the goods to a person entitled  
25 under a document of title if the person complies with  
26 subdivisions (b) and (c), unless and to the extent that the bailee  
27 establishes any of the following:

28 (1) delivery of the goods to a person whose receipt was  
29 rightful as against the claimant;

30 (2) damage to or delay, loss, or destruction of the goods for  
31 which the bailee is not liable;

32 (3) previous sale or other disposition of the goods in lawful  
33 enforcement of a lien or on a warehouse's lawful termination of  
34 storage;

35 (4) the exercise by a seller of its right to stop delivery pursuant  
36 to Section 2705 or by a lessor of its right to stop delivery  
37 pursuant to Section 10526;

38 (5) a diversion, reconsignment, or other disposition pursuant to  
39 Section 7303;



1 (6) release, satisfaction, or any other personal defense against  
2 the claimant; or

3 (7) any other lawful excuse.

4 (b) A person claiming goods covered by a document of title  
5 shall satisfy the bailee's lien if the bailee so requests or if the  
6 bailee is prohibited by law from delivering the goods until the  
7 charges are paid.

8 (c) Unless a person claiming the goods is a person against  
9 which the document of title does not confer a right under  
10 subdivision (a) of Section 7503:

11 (1) the person claiming under a document shall surrender  
12 possession or control of any outstanding negotiable document  
13 covering the goods for cancellation or indication of partial  
14 deliveries; and

15 (2) the bailee shall cancel the document or conspicuously  
16 indicate in the document the partial delivery or the bailee is liable  
17 to any person to which the document is duly negotiated.

18 7404. A bailee that in good faith has received goods and  
19 delivered or otherwise disposed of the goods according to the  
20 terms of a document of title or pursuant to this division is not  
21 liable for the goods even if:

22 (1) the person from which the bailee received the goods did  
23 not have authority to procure the document or to dispose of the  
24 goods; or

25 (2) the person to which the bailee delivered the goods did not  
26 have authority to receive the goods.

27  
28 CHAPTER 5. WAREHOUSE RECEIPTS AND BILLS OF LADING:  
29 NEGOTIATION AND TRANSFER  
30

31 7501. (a) The following rules apply to a negotiable tangible  
32 document of title:

33 (1) If the document's original terms run to the order of a  
34 named person, the document is negotiated by the named person's  
35 indorsement and delivery. After the named person's indorsement  
36 in blank or to bearer, any person may negotiate the document by  
37 delivery alone.

38 (2) If the document's original terms run to bearer, it is  
39 negotiated by delivery alone.

1 (3) If the document's original terms run to the order of a  
2 named person and it is delivered to the named person, the effect  
3 is the same as if the document had been negotiated.

4 (4) Negotiation of the document after it has been indorsed to a  
5 named person requires indorsement by the named person and  
6 delivery.

7 (5) A document is duly negotiated if it is negotiated in the  
8 manner stated in this subdivision to a holder that purchases it in  
9 good faith, without notice of any defense against or claim to it on  
10 the part of any person, and for value, unless it is established that  
11 the negotiation is not in the regular course of business or  
12 financing or involves receiving the document in settlement or  
13 payment of a monetary obligation.

14 (b) The following rules apply to a negotiable electronic  
15 document of title:

16 (1) If the document's original terms run to the order of a  
17 named person or to bearer, the document is negotiated by  
18 delivery of the document to another person. Indorsement by the  
19 named person is not required to negotiate the document.

20 (2) If the document's original terms run to the order of a  
21 named person and the named person has control of the document,  
22 the effect is the same as if the document had been negotiated.

23 (3) A document is duly negotiated if it is negotiated in the  
24 manner stated in this subdivision to a holder that purchases it in  
25 good faith, without notice of any defense against or claim to it on  
26 the part of any person, and for value, unless it is established that  
27 the negotiation is not in the regular course of business or  
28 financing or involves taking delivery of the document in  
29 settlement or payment of a monetary obligation.

30 (c) Indorsement of a nonnegotiable document of title neither  
31 makes it negotiable nor adds to the transferee's rights.

32 (d) The naming in a negotiable bill of lading of a person to be  
33 notified of the arrival of the goods does not limit the negotiability  
34 of the bill or constitute notice to a purchaser of the bill of any  
35 interest of that person in the goods.

36 7502. (a) Subject to Sections 7205 and 7503, a holder to  
37 which a negotiable document of title has been duly negotiated  
38 acquires thereby:

39 (1) title to the document;

40 (2) title to the goods;

1 (3) all rights accruing under the law of agency or estoppel,  
2 including rights to goods delivered to the bailee after the  
3 document was issued; and

4 (4) the direct obligation of the issuer to hold or deliver the  
5 goods according to the terms of the document free of any defense  
6 or claim by the issuer except those arising under the terms of the  
7 document or under this division, but in the case of a delivery  
8 order, the bailee's obligation accrues only upon the bailee's  
9 acceptance of the delivery order and the obligation acquired by  
10 the holder is that the issuer and any indorser will procure the  
11 acceptance of the bailee.

12 (b) Subject to Section 7503, title and rights acquired by due  
13 negotiation are not defeated by any stoppage of the goods  
14 represented by the document of title or by surrender of the goods  
15 by the bailee and are not impaired even if:

16 (1) the due negotiation or any prior due negotiation constituted  
17 a breach of duty;

18 (2) any person has been deprived of possession of a negotiable  
19 tangible document or control of a negotiable electronic document  
20 by misrepresentation, fraud, accident, mistake, duress, loss, theft,  
21 or conversion; or

22 (3) a previous sale or other transfer of the goods or document  
23 has been made to a third person.

24 7503. (a) A document of title confers no right in goods  
25 against a person that before issuance of the document had a legal  
26 interest or a perfected security interest in the goods and that did  
27 not:

28 (1) deliver or entrust the goods or any document of title  
29 covering the goods to the bailor or the bailor's nominee with:

30 (A) actual or apparent authority to ship, store, or sell;

31 (B) power to obtain delivery under Section 7403; or

32 (C) power of disposition under Section 2403 or 9320 or  
33 subdivision (c) of Section 9321 or subdivision (b) of Section  
34 10304 or subdivision (b) of Section 10305 or other statute or rule  
35 of law; or

36 (2) acquiesce in the procurement by the bailor or its nominee  
37 of any document.

38 (b) Title to goods based upon an unaccepted delivery order is  
39 subject to the rights of any person to which a negotiable  
40 warehouse receipt or bill of lading covering the goods has been

1 duly negotiated. That title may be defeated under Section 7504 to  
2 the same extent as the rights of the issuer or a transferee from the  
3 issuer.

4 (c) Title to goods based upon a bill of lading issued to a freight  
5 forwarder is subject to the rights of any person to which a bill  
6 issued by the freight forwarder is duly negotiated. However,  
7 delivery by the carrier in accordance with Chapter 4  
8 (commencing with Section 7401) pursuant to its own bill of  
9 lading discharges the carrier's obligation to deliver.

10 7504. (a) A transferee of a document of title, whether  
11 negotiable or nonnegotiable, to which the document has been  
12 delivered but not duly negotiated, acquires the title and rights that  
13 its transferor had or had actual authority to convey.

14 (b) In the case of a transfer of a nonnegotiable document of  
15 title, until but not after the bailee receives notice of the transfer,  
16 the rights of the transferee may be defeated:

17 (1) by those creditors of the transferor which could treat the  
18 transfer as void under Section 2402 or 10308;

19 (2) by a buyer from the transferor in ordinary course of  
20 business if the bailee has delivered the goods to the buyer or  
21 received notification of the buyer's rights;

22 (3) by a lessee from the transferor in ordinary course of  
23 business if the bailee has delivered the goods to the lessee or  
24 received notification of the lessee's rights; or

25 (4) as against the bailee, by good-faith dealings of the bailee  
26 with the transferor.

27 (c) A diversion or other change of shipping instructions by the  
28 consignor in a nonnegotiable bill of lading which causes the  
29 bailee not to deliver the goods to the consignee defeats the  
30 consignee's title to the goods if the goods have been delivered to  
31 a buyer in ordinary course of business or a lessee in ordinary  
32 course of business and, in any event, defeats the consignee's  
33 rights against the bailee.

34 (d) Delivery of the goods pursuant to a nonnegotiable  
35 document of title may be stopped by a seller under Section 2705  
36 or a lessor under Section 10526, subject to the requirements of  
37 due notification in those sections. A bailee that honors the  
38 seller's or lessor's instructions is entitled to be indemnified by  
39 the seller or lessor against any resulting loss or expense.

1 7505. The indorsement of a tangible document of title issued  
2 by a bailee does not make the indorser liable for any default by  
3 the bailee or previous endorsers.

4 7506. The transferee of a negotiable tangible document of  
5 title has a specifically enforceable right to have its transferor  
6 supply any necessary indorsement, but the transfer becomes a  
7 negotiation only as of the time the indorsement is supplied.

8 7507. If a person negotiates or delivers a document of title for  
9 value, otherwise than as a mere intermediary under Section 7508,  
10 unless otherwise agreed, the transferor, in addition to any  
11 warranty made in selling or leasing the goods, warrants to its  
12 immediate purchaser only that:

13 (1) the document is genuine;

14 (2) the transferor does not have knowledge of any fact that  
15 would impair the document's validity or worth; and

16 (3) the negotiation or delivery is rightful and fully effective  
17 with respect to the title to the document and the goods it  
18 represents.

19 7508. A collecting bank or other intermediary known to be  
20 entrusted with documents of title on behalf of another or with  
21 collection of a draft or other claim against delivery of documents  
22 warrants by the delivery of the documents only its own good  
23 faith and authority even if the collecting bank or other  
24 intermediary has purchased or made advances against the claim  
25 or draft to be collected.

26 7509. Whether a document of title is adequate to fulfill the  
27 obligations of a contract for sale, a contract for lease, or the  
28 conditions of a letter of credit is determined by Division 2  
29 (commencing with Section 2101), Division 5 (commencing with  
30 Section 5101), or Division 10 (commencing with Section 10101).

31  
32 CHAPTER 6. WAREHOUSE RECEIPTS AND BILLS OF LADING:  
33 MISCELLANEOUS PROVISIONS  
34

35 7601. (a) If a document of title is lost, stolen, or destroyed, a  
36 court may order delivery of the goods or issuance of a substitute  
37 document and the bailee may without liability to any person  
38 comply with the order. If the document was negotiable, a court  
39 may not order delivery of the goods or issuance of a substitute  
40 document without the claimant's posting security unless it finds

1 that any person that may suffer loss as a result of nonsurrender of  
2 possession or control of the document is adequately protected  
3 against the loss. If the document was nonnegotiable, the court  
4 may require security. The court may also order payment of the  
5 bailee's reasonable costs and attorney's fees in any action under  
6 this subdivision.

7 (b) A bailee that, without a court order, delivers goods to a  
8 person claiming under a missing negotiable document of title is  
9 liable to any person injured thereby. If the delivery is not in good  
10 faith, the bailee is liable for conversion. Delivery in good faith is  
11 not conversion if the claimant posts security with the bailee in an  
12 amount at least double the value of the goods at the time of  
13 posting to indemnify any person injured by the delivery which  
14 files a notice of claim within one year after the delivery.

15 7602. Unless a document of title was originally issued upon  
16 delivery of the goods by a person that did not have power to  
17 dispose of them, a lien does not attach by virtue of any judicial  
18 process to goods in the possession of a bailee for which a  
19 negotiable document of title is outstanding unless possession or  
20 control of the document is first surrendered to the bailee or the  
21 document's negotiation is enjoined. The bailee may not be  
22 compelled to deliver the goods pursuant to process until  
23 possession or control of the document is surrendered to the bailee  
24 or to the court. A purchaser of the document for value without  
25 notice of the process or injunction takes free of the lien imposed  
26 by judicial process.

27 7603. If more than one person claims title to or possession of  
28 the goods, the bailee is excused from delivery until the bailee has  
29 a reasonable time to ascertain the validity of the adverse claims  
30 or to commence an action for interpleader. The bailee may assert  
31 an interpleader either in defending an action for nondelivery of  
32 the goods or by original action.

33 SEC. 45. Section 8102 of the Commercial Code is amended  
34 to read:

35 8102. (a) In this division:

36 (1) "Adverse claim" means a claim that a claimant has a  
37 property interest in a financial asset and that it is a violation of  
38 the rights of the claimant for another person to hold, transfer, or  
39 deal with the financial asset.

1 (2) “Bearer form,” as applied to a certificated security, means  
2 a form in which the security is payable to the bearer of the  
3 security certificate according to its terms but not by reason of an  
4 indorsement.

5 (3) “Broker” means a person defined as a broker or dealer  
6 under the federal securities laws, but without excluding a bank  
7 acting in that capacity.

8 (4) “Certificated security” means a security that is represented  
9 by a certificate.

10 (5) “Clearing corporation” means any of the following:

11 (A) A person that is registered as a “clearing agency” under  
12 the federal securities laws.

13 (B) A federal reserve bank.

14 (C) Any other person that provides clearance or settlement  
15 services with respect to financial assets that would require it to  
16 register as a clearing agency under the federal securities laws but  
17 for an exclusion or exemption from the registration requirement,  
18 if its activities as a clearing corporation, including promulgation  
19 of rules, are subject to regulation by a federal or state  
20 governmental authority.

21 (6) “Communicate” means to either:

22 (A) Send a signed writing.

23 (B) Transmit information by any mechanism agreed upon by  
24 the persons transmitting and receiving the information.

25 (7) “Entitlement holder” means a person identified in the  
26 records of a securities intermediary as the person having a  
27 security entitlement against the securities intermediary. If a  
28 person acquires a security entitlement by virtue of paragraph (2)  
29 or (3) of subdivision (b) of Section 8501, that person is the  
30 entitlement holder.

31 (8) “Entitlement order” means a notification communicated to  
32 a securities intermediary directing transfer or redemption of a  
33 financial asset to which the entitlement holder has a security  
34 entitlement.

35 (9) “Financial asset,” except as otherwise provided in Section  
36 8103, means any of the following:

37 (A) A security.

38 (B) An obligation of a person or a share, participation, or other  
39 interest in a person or in property or an enterprise of a person,  
40 that is, or is of a type, dealt in or traded on financial markets, or

1 that is recognized in any area in which it is issued or dealt in as a  
2 medium for investment.

3 (C) Any property that is held by a securities intermediary for  
4 another person in a securities account if the securities  
5 intermediary has expressly agreed with the other person that the  
6 property is to be treated as a financial asset under this division.  
7 As context requires, the term means either the interest itself or  
8 the means by which a person's claim to it is evidenced, including  
9 a certificated or uncertificated security, a security certificate, or a  
10 security entitlement.

11 (10) [Reserved]

12 (11) "Endorsement" means a signature that alone or  
13 accompanied by other words is made on a security certificate in  
14 registered form or on a separate document for the purpose of  
15 assigning, transferring, or redeeming the security or granting a  
16 power to assign, transfer, or redeem it.

17 (12) "Instruction" means a notification communicated to the  
18 issuer of an uncertificated security that directs that the transfer of  
19 the security be registered or that the security be redeemed.

20 (13) "Registered form," as applied to a certificated security,  
21 means a form in which both of the following apply:

22 (A) The security certificate specifies a person entitled to the  
23 security.

24 (B) A transfer of the security may be registered upon books  
25 maintained for that purpose by or on behalf of the issuer, or the  
26 security certificate so states.

27 (14) "Securities intermediary" means either:

28 (A) A clearing corporation.

29 (B) A person, including a bank or broker, that in the ordinary  
30 course of its business maintains securities accounts for others and  
31 is acting in that capacity.

32 (15) "Security," except as otherwise provided in Section 8103,  
33 means an obligation of an issuer or a share, participation, or other  
34 interest in an issuer or in property or an enterprise of an issuer  
35 that is all of the following:

36 (A) It is represented by a security certificate in bearer or  
37 registered form, or the transfer of it may be registered upon  
38 books maintained for that purpose by or on behalf of the issuer.

39 (B) It is one of a class or series or by its terms is divisible into  
40 a class or series of shares, participations, interests, or obligations.



1 (C) It is either of the following:

2 (i) It is, or is of a type, dealt in or traded on securities  
3 exchanges or securities markets.

4 (ii) It is a medium for investment and by its terms expressly  
5 provides that it is a security governed by this division.

6 (16) “Security certificate” means a certificate representing a  
7 security.

8 (17) “Security entitlement” means the rights and property  
9 interest of an entitlement holder with respect to a financial asset  
10 specified in Chapter 5 (commencing with Section 8501).

11 (18) “Uncertificated security” means a security that is not  
12 represented by a certificate.

13 (b) Other definitions applying to this division and the sections  
14 in which they appear are:

15 Appropriate person. Section 8107.

16 Control. Section 8106.

17 Delivery. Section 8301.

18 Investment company security. Section 8103.

19 Issuer. Section 8201.

20 Overissue. Section 8210.

21 Protected purchaser. Section 8303.

22 Securities account. Section 8501.

23 (c) In addition, Division 1 (commencing with Section 1101)  
24 contains general definitions and principles of construction and  
25 interpretation applicable throughout this division.

26 (d) The characterization of a person, business, or transaction  
27 for purposes of this division does not determine the  
28 characterization of the person, business, or transaction for  
29 purposes of any other law, regulation, or rule.

30 SEC. 46. Section 8103 of the Commercial Code is amended  
31 to read:

32 8103. (a) A share or similar equity interest issued by a  
33 corporation, business trust, joint stock company, or similar entity  
34 is a security.

35 (b) An “investment company security” is a security.  
36 “Investment company security” means a share or similar equity  
37 interest issued by an entity that is registered as an investment  
38 company under the federal investment company laws, an interest  
39 in a unit investment trust that is so registered, or a face-amount  
40 certificate issued by a face-amount certificate company that is so

1 registered. Investment company security does not include an  
2 insurance policy or endowment policy or annuity contract issued  
3 by an insurance company.

4 (c) An interest in a partnership or limited liability company is  
5 not a security unless it is dealt in or traded on securities  
6 exchanges or in securities markets, its terms expressly provide  
7 that it is a security governed by this division, or it is an  
8 investment company security. However, an interest in a  
9 partnership or limited liability company is a financial asset if it is  
10 held in a securities account.

11 (d) A writing that is a security certificate is governed by this  
12 division and not by Division 3 (commencing with Section 3101),  
13 even though it also meets the requirements of that division.  
14 However, a negotiable instrument governed by Division 3  
15 (commencing with Section 3101) is a financial asset if it is held  
16 in a securities account.

17 (e) An option or similar obligation issued by a clearing  
18 corporation to its participants is not a security, but is a financial  
19 asset.

20 (f) A commodity contract, as defined in paragraph (15) of  
21 subdivision (a) of Section 9102, is not a security or a financial  
22 asset.

23 (g) A document of title is not a financial asset unless  
24 subparagraph (C) of paragraph (9) of subdivision (a) of Section  
25 8102 applies.

26 SEC. 47. Section 9102 of the Commercial Code is amended  
27 to read:

28 9102. (a) In this division:

29 (1) "Accession" means goods that are physically united with  
30 other goods in such a manner that the identity of the original  
31 goods is not lost.

32 (2) "Account," except as used in "account for," means a right  
33 to payment of a monetary obligation, whether or not earned by  
34 performance, (i) for property that has been or is to be sold,  
35 leased, licensed, assigned, or otherwise disposed of, (ii) for  
36 services rendered or to be rendered, (iii) for a policy of insurance  
37 issued or to be issued, (iv) for a secondary obligation incurred or  
38 to be incurred, (v) for energy provided or to be provided, (vi) for  
39 the use or hire of a vessel under a charter or other contract, (vii)  
40 arising out of the use of a credit or charge card or information

1 contained on or for use with the card, or (viii) as winnings in a  
2 lottery or other game of chance operated or sponsored by a state,  
3 governmental unit of a state, or person licensed or authorized to  
4 operate the game by a state or governmental unit of a state. The  
5 term includes health care insurance receivables. The term does  
6 not include (i) rights to payment evidenced by chattel paper or an  
7 instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv)  
8 investment property, (v) letter-of-credit rights or letters of credit,  
9 or (vi) rights to payment for money or funds advanced or sold,  
10 other than rights arising out of the use of a credit or charge card  
11 or information contained on or for use with the card.

12 (3) “Account debtor” means a person obligated on an account,  
13 chattel paper, or general intangible. The term does not include  
14 persons obligated to pay a negotiable instrument, even if the  
15 instrument constitutes part of chattel paper.

16 (4) “Accounting,” except as used in “accounting for,” means a  
17 record that is all of the following:

18 (A) Authenticated by a secured party.

19 (B) Indicating the aggregate unpaid secured obligations as of a  
20 date not more than 35 days earlier or 35 days later than the date  
21 of the record.

22 (C) Identifying the components of the obligations in  
23 reasonable detail.

24 (5) “Agricultural lien” means an interest in farm products that  
25 meets all of the following conditions:

26 (A) It secures payment or performance of an obligation for  
27 either of the following:

28 (i) Goods or services furnished in connection with a debtor’s  
29 farming operation.

30 (ii) Rent on real property leased by a debtor in connection with  
31 its farming operation.

32 (B) It is created by statute in favor of a person that does either  
33 of the following:

34 (i) In the ordinary course of its business furnished goods or  
35 services to a debtor in connection with a debtor’s farming  
36 operation.

37 (ii) Leased real property to a debtor in connection with the  
38 debtor’s farming operation.

39 (C) Its effectiveness does not depend on the person’s  
40 possession of the personal property.

- 1 (6) “As-extracted collateral” means either of the following:  
2 (A) Oil, gas, or other minerals that are subject to a security  
3 interest that does both of the following:  
4 (i) Is created by a debtor having an interest in the minerals  
5 before extraction.  
6 (ii) Attaches to the minerals as extracted.  
7 (B) Accounts arising out of the sale at the wellhead or  
8 minehead of oil, gas, or other minerals in which the debtor had  
9 an interest before extraction.
- 10 (7) “Authenticate” means to do either of the following:  
11 (A) To sign.  
12 (B) To execute or otherwise adopt a symbol, or encrypt or  
13 similarly process a record in whole or in part, with the present  
14 intent of the authenticating person to identify the person and  
15 adopt or accept a record.
- 16 (8) “Bank” means an organization that is engaged in the  
17 business of banking. The term includes savings banks, savings  
18 and loan associations, credit unions, and trust companies.
- 19 (9) “Cash proceeds” means proceeds that are money, checks,  
20 deposit accounts, or the like.
- 21 (10) “Certificate of title” means a certificate of title with  
22 respect to which a statute provides for the security interest in  
23 question to be indicated on the certificate as a condition or result  
24 of the security interest’s obtaining priority over the rights of a  
25 lien creditor with respect to the collateral.
- 26 (11) “Chattel paper” means a record or records that evidence  
27 both a monetary obligation and a security interest in specific  
28 goods, a security interest in specific goods and software used in  
29 the goods, a security interest in specific goods and license of  
30 software used in the goods, a lease of specific goods, or a lease of  
31 specific goods and license of software used in the goods. In this  
32 paragraph, “monetary obligation” means a monetary obligation  
33 secured by the goods or owed under a lease of the goods and  
34 includes a monetary obligation with respect to software used in  
35 the goods. The term does not include (i) charters or other  
36 contracts involving the use or hire of a vessel or (ii) records that  
37 evidence a right to payment arising out of the use of a credit or  
38 charge card or information contained on or for use with the card.  
39 If a transaction is evidenced by records that include an

1 instrument or series of instruments, the group of records taken  
2 together constitutes chattel paper.

3 (12) “Collateral” means the property subject to a security  
4 interest or agricultural lien. The term includes all of the  
5 following:

6 (A) Proceeds to which a security interest attaches.

7 (B) Accounts, chattel paper, payment intangibles, and  
8 promissory notes that have been sold.

9 (C) Goods that are the subject of a consignment.

10 (13) “Commercial tort claim” means a claim arising in tort  
11 with respect to which either of the following conditions is  
12 satisfied:

13 (A) The claimant is an organization.

14 (B) The claimant is an individual and both of the following  
15 conditions are satisfied regarding the claim:

16 (i) It arose in the course of the claimant’s business or  
17 profession.

18 (ii) It does not include damages arising out of personal injury  
19 to or the death of an individual.

20 (14) “Commodity account” means an account maintained by a  
21 commodity intermediary in which a commodity contract is  
22 carried for a commodity customer.

23 (15) “Commodity contract” means a commodity futures  
24 contract, an option on a commodity futures contract, a  
25 commodity option, or another contract if the contract or option is  
26 either of the following:

27 (A) Traded on or subject to the rules of a board of trade that  
28 has been designated as a contract market for such a contract  
29 pursuant to federal commodities laws.

30 (B) Traded on a foreign commodity board of trade, exchange,  
31 or market, and is carried on the books of a commodity  
32 intermediary for a commodity customer.

33 (16) “Commodity customer” means a person for which a  
34 commodity intermediary carries a commodity contract on its  
35 books.

36 (17) “Commodity intermediary” means a person that is either  
37 of the following:

38 (A) Is registered as a futures commission merchant under  
39 federal commodities law.

1 (B) In the ordinary course of its business provides clearance or  
2 settlement services for a board of trade that has been designated  
3 as a contract market pursuant to federal commodities law.

4 (18) “Communicate” means to do any of the following:

5 (A) To send a written or other tangible record.

6 (B) To transmit a record by any means agreed upon by the  
7 persons sending and receiving the record.

8 (C) In the case of transmission of a record to or by a filing  
9 office, to transmit a record by any means prescribed by  
10 filing-office rule.

11 (19) “Consignee” means a merchant to which goods are  
12 delivered in a consignment.

13 (20) “Consignment” means a transaction, regardless of its  
14 form, in which a person delivers goods to a merchant for the  
15 purpose of sale and all of the following conditions are satisfied:

16 (A) The merchant satisfies all of the following conditions:

17 (i) He or she deals in goods of that kind under a name other  
18 than the name of the person making delivery.

19 (ii) He or she is not an auctioneer.

20 (iii) He or she is not generally known by its creditors to be  
21 substantially engaged in selling the goods of others.

22 (B) With respect to each delivery, the aggregate value of the  
23 goods is one thousand dollars (\$1,000) or more at the time of  
24 delivery.

25 (C) The goods are not consumer goods immediately before  
26 delivery.

27 (D) The transaction does not create a security interest that  
28 secures an obligation.

29 (21) “Consignor” means a person that delivers goods to a  
30 consignee in a consignment.

31 (22) “Consumer debtor” means a debtor in a consumer  
32 transaction.

33 (23) “Consumer goods” means goods that are used or bought  
34 for use primarily for personal, family, or household purposes.

35 (24) “Consumer-goods transaction” means a consumer  
36 transaction in which both of the following conditions are  
37 satisfied:

38 (A) An individual incurs an obligation primarily for personal,  
39 family, or household purposes.

1 (B) A security interest in consumer goods secures the  
2 obligation.

3 (25) “Consumer obligor” means an obligor who is an  
4 individual and who incurred the obligation as part of a  
5 transaction entered into primarily for personal, family, or  
6 household purposes.

7 (26) “Consumer transaction” means a transaction in which (i)  
8 an individual incurs an obligation primarily for personal, family,  
9 or household purposes, (ii) a security interest secures the  
10 obligation, and (iii) the collateral is held or acquired primarily for  
11 personal, family, or household purposes. The term includes  
12 consumer-goods transactions.

13 (27) “Continuation statement” means an amendment of a  
14 financing statement which does both of the following:

15 (A) Identifies, by its file number, the initial financing  
16 statement to which it relates.

17 (B) Indicates that it is a continuation statement for, or that it is  
18 filed to continue the effectiveness of, the identified financing  
19 statement.

20 (28) “Debtor” means any of the following:

21 (A) A person having an interest, other than a security interest  
22 or other lien, in the collateral, whether or not the person is an  
23 obligor.

24 (B) A seller of accounts, chattel paper, payment intangibles, or  
25 promissory notes.

26 (C) A consignee.

27 (29) “Deposit account” means a demand, time, savings,  
28 passbook, or similar account maintained with a bank. The term  
29 does not include investment property or accounts evidenced by  
30 an instrument.

31 (30) “Document” means a document of title or a receipt of the  
32 type described in subdivision (b) of Section 7201.

33 (31) “Electronic chattel paper” means chattel paper evidenced  
34 by a record or records consisting of information stored in an  
35 electronic medium.

36 (32) “Encumbrance” means a right, other than an ownership  
37 interest, in real property. The term includes mortgages and other  
38 liens on real property.

39 (33) “Equipment” means goods other than inventory, farm  
40 products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

(A) Crops grown, growing, or to be grown, including both of the following:

(i) Crops produced on trees, vines, and bushes.

(ii) Aquatic goods produced in aquacultural operations.

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.

(C) Supplies used or produced in a farming operation.

(D) Products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to subdivision (a) of Section 9519.

(37) “Filing office” means an office designated in Section 9501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to Section 9526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subdivisions (a) and (b) of Section 9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) [Reserved]



1 (44) “Goods” means all things that are movable when a  
2 security interest attaches. The term includes (i) fixtures, (ii)  
3 standing timber that is to be cut and removed under a conveyance  
4 or contract for sale, (iii) the unborn young of animals, (iv) crops  
5 grown, growing, or to be grown, even if the crops are produced  
6 on trees, vines, or bushes, and (v) manufactured homes. The term  
7 also includes a computer program embedded in goods and any  
8 supporting information provided in connection with a transaction  
9 relating to the program if (i) the program is associated with the  
10 goods in such a manner that it customarily is considered part of  
11 the goods, or (ii) by becoming the owner of the goods, a person  
12 acquires a right to use the program in connection with the goods.  
13 The term does not include a computer program embedded in  
14 goods that consist solely of the medium in which the program is  
15 embedded. The term also does not include accounts, chattel  
16 paper, commercial tort claims, deposit accounts, documents,  
17 general intangibles, instruments, investment property,  
18 letter-of-credit rights, letters of credit, money, or oil, gas, or other  
19 minerals before extraction.

20 (45) “Governmental unit” means a subdivision, agency,  
21 department, county, parish, municipality, or other unit of the  
22 government of the United States, a state, or a foreign country.  
23 The term includes an organization having a separate corporate  
24 existence if the organization is eligible to issue debt on which  
25 interest is exempt from income taxation under the laws of the  
26 United States.

27 (46) “Health care insurance receivable” means an interest in or  
28 claim under a policy of insurance which is a right to payment of  
29 a monetary obligation for health care goods or services provided  
30 or to be provided.

31 (47) “Instrument” means a negotiable instrument or any other  
32 writing that evidences a right to the payment of a monetary  
33 obligation, is not itself a security agreement or lease, and is of a  
34 type that in ordinary course of business is transferred by delivery  
35 with any necessary indorsement or assignment. The term does  
36 not include (i) investment property, (ii) letters of credit, or (iii)  
37 writings that evidence a right to payment arising out of the use of  
38 a credit or charge card or information contained on or for use  
39 with the card.

1 (48) “Inventory” means goods, other than farm products,  
2 which are any of the following:

3 (A) Leased by a person as lessor.

4 (B) Held by a person for sale or lease or to be furnished under  
5 a contract of service.

6 (C) Furnished by a person under a contract of service.

7 (D) Consist of raw materials, work in process, or materials  
8 used or consumed in a business.

9 (49) “Investment property” means a security, whether  
10 certificated or uncertificated, security entitlement, securities  
11 account, commodity contract, or commodity account.

12 (50) “Jurisdiction of organization,” with respect to a registered  
13 organization, means the jurisdiction under whose law the  
14 organization is organized.

15 (51) “Letter-of-credit right” means a right to payment or  
16 performance under a letter of credit, whether or not the  
17 beneficiary has demanded or is at the time entitled to demand  
18 payment or performance. The term does not include the right of a  
19 beneficiary to demand payment or performance under a letter of  
20 credit.

21 (52) (A) “Lien creditor” means any of the following:

22 (i) A creditor that has acquired a lien on the property involved  
23 by attachment, levy, or the like.

24 (ii) An assignee for benefit of creditors from the time of  
25 assignment.

26 (iii) A trustee in bankruptcy from the date of the filing of the  
27 petition.

28 (iv) A receiver in equity from the time of appointment.

29 (B) “Lien creditor” does not include a creditor who by filing a  
30 notice with the Secretary of State has acquired only an  
31 attachment or judgment lien on personal property, or both.

32 (53) “Manufactured home” means a structure, transportable in  
33 one or more sections, which, in the traveling mode, is eight  
34 body-feet or more in width or 40 body-feet or more in length, or,  
35 when erected on site, is 320 or more square feet, and which is  
36 built on a permanent chassis and designed to be used as a  
37 dwelling with or without a permanent foundation when  
38 connected to the required utilities, and includes the plumbing,  
39 heating, air-conditioning, and electrical systems contained  
40 therein. The term includes any structure that meets all of the

1 requirements of this paragraph except the size requirements and  
2 with respect to which the manufacturer voluntarily files a  
3 certification required by the United States Secretary of Housing  
4 and Urban Development and complies with the standards  
5 established under Title 42 of the United States Code.

6 (54) “Manufactured home transaction” means a secured  
7 transaction that satisfies either of the following:

8 (A) It creates a purchase money security interest in a  
9 manufactured home, other than a manufactured home held as  
10 inventory.

11 (B) It is a secured transaction in which a manufactured home,  
12 other than a manufactured home held as inventory, is the primary  
13 collateral.

14 (55) “Mortgage” means a consensual interest in real property,  
15 including fixtures, which secures payment or performance of an  
16 obligation.

17 (56) “New debtor” means a person that becomes bound as  
18 debtor under subdivision (d) of Section 9203 by a security  
19 agreement previously entered into by another person.

20 (57) “New value” means (i) money, (ii) money’s worth in  
21 property, services, or new credit, or (iii) release by a transferee of  
22 an interest in property previously transferred to the transferee.  
23 The term does not include an obligation substituted for another  
24 obligation.

25 (58) “Noncash proceeds” means proceeds other than cash  
26 proceeds.

27 (59) “Obligor” means a person that, with respect to an  
28 obligation secured by a security interest in or an agricultural lien  
29 on the collateral, (i) owes payment or other performance of the  
30 obligation, (ii) has provided property other than the collateral to  
31 secure payment or other performance of the obligation, or (iii) is  
32 otherwise accountable in whole or in part for payment or other  
33 performance of the obligation. The term does not include issuers  
34 or nominated persons under a letter of credit.

35 (60) “Original debtor,” except as used in subdivision (c) of  
36 Section 9310, means a person that, as debtor, entered into a  
37 security agreement to which a new debtor has become bound  
38 under subdivision (d) of Section 9203.

1 (61) “Payment intangible” means a general intangible under  
2 which the account debtor’s principal obligation is a monetary  
3 obligation.

4 (62) “Person related to,” with respect to an individual, means  
5 any of the following:

6 (A) The spouse of the individual.

7 (B) A brother, brother-in-law, sister, or sister-in-law of the  
8 individual.

9 (C) An ancestor or lineal descendant of the individual or the  
10 individual’s spouse.

11 (D) Any other relative, by blood or marriage, of the individual  
12 or the individual’s spouse who shares the same home with the  
13 individual.

14 (63) “Person related to,” with respect to an organization,  
15 means any of the following:

16 (A) A person directly or indirectly controlling, controlled by,  
17 or under common control with the organization.

18 (B) An officer or director of, or a person performing similar  
19 functions with respect to, the organization.

20 (C) An officer or director of, or a person performing similar  
21 functions with respect to, a person described in subparagraph  
22 (A).

23 (D) The spouse of an individual described in subparagraph  
24 (A), (B), or (C).

25 (E) An individual who is related by blood or marriage to an  
26 individual described in subparagraph (A), (B), (C), or (D) and  
27 shares the same home with the individual.

28 (64) “Proceeds,” except as used in subdivision (b) of Section  
29 9609, means any of the following property:

30 (A) Whatever is acquired upon the sale, lease, license,  
31 exchange, or other disposition of collateral.

32 (B) Whatever is collected on, or distributed on account of,  
33 collateral.

34 (C) Rights arising out of collateral.

35 (D) To the extent of the value of collateral, claims arising out  
36 of the loss, nonconformity, or interference with the use of,  
37 defects or infringement of rights in, or damage to, the collateral.

38 (E) To the extent of the value of collateral and to the extent  
39 payable to the debtor or the secured party, insurance payable by

1 reason of the loss or nonconformity of, defects or infringement of  
2 rights in, or damage to, the collateral.

3 (65) “Promissory note” means an instrument that evidences a  
4 promise to pay a monetary obligation, does not evidence an order  
5 to pay, and does not contain an acknowledgment by a bank that  
6 the bank has received for deposit a sum of money or funds.

7 (66) “Proposal” means a record authenticated by a secured  
8 party that includes the terms on which the secured party is  
9 willing to accept collateral in full or partial satisfaction of the  
10 obligation it secures pursuant to Sections 9620, 9621, and 9622.

11 (67) “Public finance transaction” means a secured transaction  
12 in connection with which all of the following conditions are  
13 satisfied:

14 (A) Debt securities are issued.

15 (B) All or a portion of the securities issued have an initial  
16 stated maturity of at least 20 years.

17 (C) The debtor, obligor, secured party, account debtor or other  
18 person obligated on collateral, assignor or assignee of a secured  
19 obligation, or assignor or assignee of a security interest is a state  
20 or a governmental unit of a state.

21 (68) “Pursuant to commitment,” with respect to an advance  
22 made or other value given by a secured party, means pursuant to  
23 the secured party’s obligation, whether or not a subsequent event  
24 of default or other event not within the secured party’s control  
25 has relieved or may relieve the secured party from its obligation.

26 (69) “Record,” except as used in “for record,” “of record,”  
27 “record or legal title,” and “record owner,” means information  
28 that is inscribed on a tangible medium or which is stored in an  
29 electronic or other medium and is retrievable in perceivable  
30 form.

31 (70) “Registered organization” means an organization  
32 organized solely under the law of a single state or the United  
33 States and as to which the state or the United States must  
34 maintain a public record showing the organization to have been  
35 organized.

36 (71) “Secondary obligor” means an obligor to the extent that  
37 either of the following conditions are satisfied:

38 (A) The obligor’s obligation is secondary.

1 (B) The obligor has a right of recourse with respect to an  
2 obligation secured by collateral against the debtor, another  
3 obligor, or property of either.

4 (72) “Secured party” means any of the following:

5 (A) A person in whose favor a security interest is created or  
6 provided for under a security agreement, whether or not any  
7 obligation to be secured is outstanding.

8 (B) A person that holds an agricultural lien.

9 (C) A consignor.

10 (D) A person to which accounts, chattel paper, payment  
11 intangibles, or promissory notes have been sold.

12 (E) A trustee, indenture trustee, agent, collateral agent, or  
13 other representative in whose favor a security interest or  
14 agricultural lien is created or provided for.

15 (F) A person that holds a security interest arising under  
16 Section 2401, 2505, 4210, or 5118, or under subdivision (3) of  
17 Section 2711 or subdivision (5) of Section 10508.

18 (73) “Security agreement” means an agreement that creates or  
19 provides for a security interest.

20 (74) “Send,” in connection with a record or notification,  
21 means to do either of the following:

22 (A) To deposit in the mail, deliver for transmission, or  
23 transmit by any other usual means of communication, with  
24 postage or cost of transmission provided for, addressed to any  
25 address reasonable under the circumstances.

26 (B) To cause the record or notification to be received within  
27 the time that it would have been received if properly sent under  
28 subparagraph (A).

29 (75) “Software” means a computer program and any  
30 supporting information provided in connection with a transaction  
31 relating to the program. The term does not include a computer  
32 program that is included in the definition of goods.

33 (76) “State” means a state of the United States, the District of  
34 Columbia, Puerto Rico, the United States Virgin Islands, or any  
35 territory or insular possession subject to the jurisdiction of the  
36 United States.

37 (77) “Supporting obligation” means a letter-of-credit right or  
38 secondary obligation that supports the payment or performance  
39 of an account, chattel paper, document, general intangible,  
40 instrument, or investment property.

(78) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) “Termination statement” means an amendment of a financing statement that does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) “Transmitting utility” means a person primarily engaged in the business of any of the following:

(A) Operating a railroad, subway, street railway, or trolley bus.

(B) Transmitting communications electrically, electromagnetically, or by light.

(C) Transmitting goods by pipeline or sewer.

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other divisions apply to this division:

“Applicant”	Section 5102.
“Beneficiary”	Section 5102.
“Broker”	Section 8102.
“Certificated security”	Section 8102.
“Check”	Section 3104.
“Clearing corporation”	Section 8102.
“Contract for sale”	Section 2106.
“Control”	Section 7106.
“Customer”	Section 4104.
“Entitlement holder”	Section 8102.
“Financial asset”	Section 8102.
“Holder in due course”	Section 3302.
“Issuer” (with respect to a letter of credit or letter-of-credit right)	Section 5102.
“Issuer” (with respect to a security)	Section 8201.
“Issuer” (with respect to documents of title)	Section 7102.
“Lease”	Section 10103.
“Lease agreement”	Section 10103.
“Lease contract”	Section 10103.

1	“Leasehold interest”	Section 10103.
2	“Lessee”	Section 10103.
3	“Lessee in ordinary course of business”	Section 10103.
4	“Lessor”	Section 10103.
5	“Lessor’s residual interest”	Section 10103.
6	“Letter of credit”	Section 5102.
7	“Merchant”	Section 2104.
8	“Negotiable instrument”	Section 3104.
9	“Nominated person”	Section 5102.
10	“Note”	Section 3104.
11	“Proceeds of a letter of credit”	Section 5114.
12	“Prove”	Section 3103.
13	“Sale”	Section 2106.
14	“Securities account”	Section 8501.
15	“Securities intermediary”	Section 8102.
16	“Security”	Section 8102.
17	“Security certificate”	Section 8102.
18	“Security entitlement”	Section 8102.
19	“Uncertificated security”	Section 8102.

20

21 (c) Division 1 (commencing with Section 1101) contains  
22 general definitions and principles of construction and  
23 interpretation applicable throughout this division.

24 SEC. 48. Section 9203 of the Commercial Code is amended  
25 to read:

26 9203. (a) A security interest attaches to collateral when it  
27 becomes enforceable against the debtor with respect to the  
28 collateral, unless an agreement expressly postpones the time of  
29 attachment.

30 (b) Except as otherwise provided in subdivisions (c) to (i),  
31 inclusive, a security interest is enforceable against the debtor and  
32 third parties with respect to the collateral only if each of the  
33 following conditions is satisfied:

34 (1) Value has been given.

35 (2) The debtor has rights in the collateral or the power to  
36 transfer rights in the collateral to a secured party.

37 (3) One of the following conditions is met:

38 (A) The debtor has authenticated a security agreement that  
39 provides a description of the collateral and, if the security interest  
40 covers timber to be cut, a description of the land concerned.



1 (B) The collateral is not a certificated security and is in the  
2 possession of the secured party under Section 9313 pursuant to  
3 the debtor's security agreement.

4 (C) The collateral is a certificated security in registered form  
5 and the security certificate has been delivered to the secured  
6 party under Section 8301 pursuant to the debtor's security  
7 agreement.

8 (D) The collateral is deposit accounts, electronic chattel paper,  
9 investment property, letter-of-credit rights, or electronic  
10 documents and the secured party has control under Section 7106,  
11 9104, 9105, 9106, or 9107 pursuant to the debtor's security  
12 agreement.

13 (c) Subdivision (b) is subject to Section 4210 on the security  
14 interest of a collecting bank, Section 5118 on the security interest  
15 of a letter-of-credit issuer or nominated person, Section 9110 on  
16 a security interest arising under Division 2 (commencing with  
17 Section 2101) or Division 10 (commencing with Section 10101),  
18 and Section 9206 on security interests in investment property.

19 (d) A person becomes bound as debtor by a security agreement  
20 entered into by another person if, by operation of law other than  
21 this division or by contract, either of the following conditions is  
22 satisfied:

23 (1) The security agreement becomes effective to create a  
24 security interest in the person's property.

25 (2) The person becomes generally obligated for the obligations  
26 of the other person, including the obligation secured under the  
27 security agreement, and acquires or succeeds to all or  
28 substantially all of the assets of the other person.

29 (e) If a new debtor becomes bound as debtor by a security  
30 agreement entered into by another person both of the following  
31 apply:

32 (1) The agreement satisfies paragraph (3) of subdivision (b)  
33 with respect to existing or after-acquired property of the new  
34 debtor to the extent the property is described in the agreement.

35 (2) Another agreement is not necessary to make a security  
36 interest in the property enforceable.

37 (f) The attachment of a security interest in collateral gives the  
38 secured party the rights to proceeds provided by Section 9315  
39 and is also attachment of a security interest in a supporting  
40 obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

SEC. 49. Section 9207 of the Commercial Code is amended to read:

9207. (a) Except as otherwise provided in subdivision (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subdivision (d), if a secured party has possession of collateral all of the following apply:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral.

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage.

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled.

(4) The secured party may use or operate the collateral for any of the following purposes:

(A) For the purpose of preserving the collateral or its value.

(B) As permitted by an order of a court having competent jurisdiction.

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subdivision (d), a secured party having possession of collateral or control of collateral under Section 7106, 9104, 9105, 9106, or 9107 may or shall, as the case may be, do all of the following:

1 (1) May hold as additional security any proceeds, except  
2 money or funds, received from the collateral.

3 (2) Shall apply money or funds received from the collateral to  
4 reduce the secured obligation, unless remitted to the debtor.

5 (3) May create a security interest in the collateral.

6 (d) If the secured party is a buyer of accounts, chattel paper,  
7 payment intangibles, or promissory notes or a consignor both of  
8 the following apply:

9 (1) Subdivision (a) does not apply unless the secured party is  
10 entitled under an agreement to either of the following:

11 (A) To charge back uncollected collateral.

12 (B) Otherwise to full or limited recourse against the debtor or  
13 a secondary obligor based on the nonpayment or other default of  
14 an account debtor or other obligor on the collateral.

15 (2) Subdivisions (b) and (c) do not apply.

16 SEC. 50. Section 9208 of the Commercial Code is amended  
17 to read:

18 9208. (a) This section applies to cases in which there is no  
19 outstanding secured obligation and the secured party is not  
20 committed to make advances, incur obligations, or otherwise  
21 give value.

22 (b) Within 10 days after receiving an authenticated demand by  
23 the debtor all of the following apply:

24 (1) A secured party having control of a deposit account under  
25 paragraph (2) of subdivision (a) of Section 9104 shall send to the  
26 bank with which the deposit account is maintained an  
27 authenticated statement that releases the bank from any further  
28 obligation to comply with instructions originated by the secured  
29 party.

30 (2) A secured party having control of a deposit account under  
31 paragraph (3) of subdivision (a) of Section 9104 shall do either of  
32 the following:

33 (A) Pay the debtor the balance on deposit in the deposit  
34 account.

35 (B) Transfer the balance on deposit into a deposit account in  
36 the debtor's name.

37 (3) A secured party, other than a buyer, having control of  
38 electronic chattel paper under Section 9105 shall do all of the  
39 following:

1 (A) Communicate the authoritative copy of the electronic  
2 chattel paper to the debtor or its designated custodian.

3 (B) If the debtor designates a custodian that is the designated  
4 custodian with which the authoritative copy of the electronic  
5 chattel paper is maintained for the secured party, communicate to  
6 the custodian an authenticated record releasing the designated  
7 custodian from any further obligation to comply with instructions  
8 originated by the secured party and instructing the custodian to  
9 comply with instructions originated by the debtor.

10 (C) Take appropriate action to enable the debtor or its  
11 designated custodian to make copies of or revisions to the  
12 authoritative copy which add or change an identified assignee of  
13 the authoritative copy without the consent of the secured party.

14 (4) A secured party having control of investment property  
15 under paragraph (2) of subdivision (d) of Section 8106 or under  
16 subdivision (b) of Section 9106 shall send to the securities  
17 intermediary or commodity intermediary with which the security  
18 entitlement or commodity contract is maintained an authenticated  
19 record that releases the securities intermediary or commodity  
20 intermediary from any further obligation to comply with  
21 entitlement orders or directions originated by the secured party.

22 (5) A secured party having control of a letter-of-credit right  
23 under Section 9107 shall send to each person having an  
24 unfulfilled obligation to pay or deliver proceeds of the letter of  
25 credit to the secured party an authenticated release from any  
26 further obligation to pay or deliver proceeds of the letter of credit  
27 to the secured party.

28 (6) A secured party having control of an electronic document  
29 *under Section 7106* shall:

30 (A) give control of the electronic document to the debtor or its  
31 designated custodian;

32 (B) if the debtor designates a custodian that is the designated  
33 custodian with which the authoritative copy of the electronic  
34 document is maintained for the secured party, communicate to  
35 the custodian an authenticated record releasing the designated  
36 custodian from any further obligation to comply with instructions  
37 originated by the secured party and instructing the custodian to  
38 comply with instructions originated by the debtor; and

39 (C) take appropriate action to enable the debtor or its  
40 designated custodian to make copies of or revisions to the

1 authoritative copy which add or change an identified assignee of  
2 the authoritative copy without the consent of the secured party.

3 SEC. 51. Section 9301 of the Commercial Code is amended  
4 to read:

5 9301. Except as otherwise provided in Sections 9303 to 9306,  
6 inclusive, the following rules determine the law governing  
7 perfection, the effect of perfection or nonperfection, and the  
8 priority of a security interest in collateral:

9 (1) Except as otherwise provided in this section, while a  
10 debtor is located in a jurisdiction, the local law of that  
11 jurisdiction governs perfection, the effect of perfection or  
12 nonperfection, and the priority of a security interest in collateral.

13 (2) While collateral is located in a jurisdiction, the local law of  
14 that jurisdiction governs perfection, the effect of perfection or  
15 nonperfection, and the priority of a possessory security interest in  
16 that collateral.

17 (3) Except as otherwise provided in paragraph (4), while  
18 negotiable tangible documents, goods, instruments, money, or  
19 tangible chattel paper is located in a jurisdiction, the local law of  
20 that jurisdiction governs all of the following:

21 (A) Perfection of a security interest in the goods by filing a  
22 fixture filing.

23 (B) Perfection of a security interest in timber to be cut.

24 (C) The effect of perfection or nonperfection and the priority  
25 of a nonpossessory security interest in the collateral.

26 (4) The local law of the jurisdiction in which the wellhead or  
27 minehead is located governs perfection, the effect of perfection  
28 or nonperfection, and the priority of a security interest in  
29 as-extracted collateral.

30 SEC. 52. Section 9310 of the Commercial Code is amended  
31 to read:

32 9310. (a) Except as otherwise provided in subdivision (b)  
33 and in subdivision (b) of Section 9312, a financing statement  
34 must be filed to perfect all security interests and agricultural  
35 liens.

36 (b) The filing of a financing statement is not necessary to  
37 perfect a security interest that satisfies any of the following  
38 conditions:

39 (1) It is perfected under subdivision (d), (e), (f), or (g) of  
40 Section 9308.

1 (2) It is perfected under Section 9309 when it attaches.

2 (3) It is a security interest in property subject to a statute,  
3 regulation, or treaty described in subdivision (a) of Section 9311.

4 (4) It is a security interest in goods in possession of a bailee  
5 which is perfected under paragraph (1) or (2) of subdivision (d)  
6 of Section 9312.

7 (5) It is a security interest in certificated securities, documents,  
8 goods, or instruments which is perfected without filing, control,  
9 or possession under subdivision (e), (f), or (g) of Section 9312.

10 (6) It is a security interest in collateral in the secured party's  
11 possession under Section 9313.

12 (7) It is a security interest in a certificated security which is  
13 perfected by delivery of the security certificate to the secured  
14 party under Section 9313.

15 (8) It is a security interest in deposit accounts, electronic  
16 chattel paper, electronic documents, investment property, or  
17 letter-of-credit rights which is perfected by control under Section  
18 9314.

19 (9) It is a security interest in proceeds which is perfected under  
20 Section 9315.

21 (10) It is perfected under Section 9316.

22 (11) It is a security interest in, or claim in or under, any policy  
23 of insurance including unearned premiums which is perfected by  
24 written notice to the insurer under paragraph (4) of subdivision  
25 (b) of Section 9312.

26 (c) If a secured party assigns a perfected security interest or  
27 agricultural lien, a filing under this division is not required to  
28 continue the perfected status of the security interest against  
29 creditors of and transferees from the original debtor.

30 SEC. 53. Section 9312 of the Commercial Code is amended  
31 to read:

32 9312. (a) A security interest in chattel paper, negotiable  
33 documents, instruments, or investment property may be perfected  
34 by filing.

35 (b) Except as otherwise provided in subdivisions (c) and (d) of  
36 Section 9315 for proceeds, all of the following apply:

37 (1) A security interest in a deposit account may be perfected  
38 only by control under Section 9314.

1 (2) Except as otherwise provided in subdivision (d) of Section  
2 9308, a security interest in a letter-of-credit right may be  
3 perfected only by control under Section 9314.

4 (3) A security interest in money may be perfected only by the  
5 secured party's taking possession under Section 9313.

6 (4) A security interest in, or claim in or under, any policy of  
7 insurance, including unearned premiums, may be perfected only  
8 by giving written notice of the security interest or claim to the  
9 insurer. This paragraph does not apply to a health care insurance  
10 receivable. A security interest in a health care insurance  
11 receivable may be perfected only as otherwise provided in this  
12 division.

13 (c) While goods are in the possession of a bailee that has  
14 issued a negotiable document covering the goods both of the  
15 following apply:

16 (1) A security interest in the goods may be perfected by  
17 perfecting a security interest in the document.

18 (2) A security interest perfected in the document has priority  
19 over any security interest that becomes perfected in the goods by  
20 another method during that time.

21 (d) While goods are in the possession of a bailee that has  
22 issued a nonnegotiable document covering the goods, a security  
23 interest in the goods may be perfected by any of the following  
24 methods:

25 (1) Issuance of a document in the name of the secured party.

26 (2) The bailee's receipt of notification of the secured party's  
27 interest.

28 (3) Filing as to the goods.

29 (e) A security interest in certificated securities, negotiable  
30 documents, or instruments is perfected without filing or the  
31 taking of possession or control for a period of 20 days from the  
32 time it attaches to the extent that it arises for new value given  
33 under an authenticated security agreement.

34 (f) A perfected security interest in a negotiable document or  
35 goods in possession of a bailee, other than one that has issued a  
36 negotiable document for the goods, remains perfected for 20 days  
37 without filing if the secured party makes available to the debtor  
38 the goods or documents representing the goods for the purpose of  
39 either of the following:

40 (1) Ultimate sale or exchange.

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of either of the following:

(1) Ultimate sale or exchange.

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the 20-day period specified in subdivision (e), (f), or (g) expires, perfection depends upon compliance with this division.

SEC. 54. Section 9313 of the Commercial Code is amended to read:

9313. (a) Except as otherwise provided in subdivision (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in subdivision (d) of Section 9316.

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when either of the following conditions is satisfied:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit.

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier



1 than the time the secured party takes possession and continues  
2 only while the secured party retains possession.

3 (e) A security interest in a certificated security in registered  
4 form is perfected by delivery when delivery of the certificated  
5 security occurs under Section 8301 and remains perfected by  
6 delivery until the debtor obtains possession of the security  
7 certificate.

8 (f) A person in possession of collateral is not required to  
9 acknowledge that it holds possession for a secured party's  
10 benefit.

11 (g) If a person acknowledges that it holds possession for the  
12 secured party's benefit both of the following apply:

13 (1) The acknowledgment is effective under subdivision (c) or  
14 under subdivision (a) of Section 8301, even if the  
15 acknowledgment violates the rights of a debtor.

16 (2) Unless the person otherwise agrees or law other than this  
17 division otherwise provides, the person does not owe any duty to  
18 the secured party and is not required to confirm the  
19 acknowledgment to another person.

20 (h) A secured party having possession of collateral does not  
21 relinquish possession by delivering the collateral to a person  
22 other than the debtor or a lessee of the collateral from the debtor  
23 in the ordinary course of the debtor's business if the person was  
24 instructed before the delivery or is instructed contemporaneously  
25 with the delivery to do either of the following:

26 (1) To hold possession of the collateral for the secured party's  
27 benefit.

28 (2) To redeliver the collateral to the secured party.

29 (i) A secured party does not relinquish possession, even if a  
30 delivery under subdivision (h) violates the rights of a debtor. A  
31 person to which collateral is delivered under subdivision (h) does  
32 not owe any duty to the secured party and is not required to  
33 confirm the delivery to another person unless the person  
34 otherwise agrees or law other than this division otherwise  
35 provides.

36 SEC. 55. Section 9314 of the Commercial Code is amended  
37 to read:

38 9314. (a) A security interest in investment property, deposit  
39 accounts, letter-of-credit rights, electronic chattel paper, or

1 electronic documents may be perfected by control of the  
2 collateral under Section 7106, 9104, 9105, 9106, or 9107.

3 (b) A security interest in deposit accounts, electronic chattel  
4 paper, letter-of-credit rights, or electronic documents is perfected  
5 by control under Section 7106, 9104, 9105, or 9107 when the  
6 secured party obtains control and remains perfected by control  
7 only while the secured party retains control.

8 (c) A security interest in investment property is perfected by  
9 control under Section 9106 from the time the secured party  
10 obtains control and remains perfected by control until both of the  
11 following conditions are satisfied:

12 (1) The secured party does not have control.

13 (2) One of the following occurs:

14 (A) If the collateral is a certificated security, the debtor has or  
15 acquires possession of the security certificate.

16 (B) If the collateral is an uncertificated security, the issuer has  
17 registered or registers the debtor as the registered owner.

18 (C) If the collateral is a security entitlement, the debtor is or  
19 becomes the entitlement holder.

20 SEC. 56. Section 9317 of the Commercial Code is amended  
21 to read:

22 9317. (a) A security interest or agricultural lien is  
23 subordinate to the rights of both of the following:

24 (1) A person entitled to priority under Section 9322.

25 (2) Except as otherwise provided in subdivision (e), a person  
26 that becomes a lien creditor before the earlier of the time the  
27 security interest or agricultural lien is perfected, or one of the  
28 conditions specified in paragraph (3) of subdivision (b) of  
29 Section 9203 is met and a financing statement covering the  
30 collateral is filed.

31 (b) Except as otherwise provided in subdivision (e), a buyer,  
32 other than a secured party, of tangible chattel paper, tangible  
33 documents, goods, instruments, or a security certificate takes free  
34 of a security interest or agricultural lien if the buyer gives value  
35 and receives delivery of the collateral without knowledge of the  
36 security interest or agricultural lien and before it is perfected.

37 (c) Except as otherwise provided in subdivision (e), a lessee of  
38 goods takes free of a security interest or agricultural lien if the  
39 lessee gives value and receives delivery of the collateral without

1 knowledge of the security interest or agricultural lien and before  
2 it is perfected.

3 (d) A licensee of a general intangible or a buyer, other than a  
4 secured party, of accounts, electronic chattel paper, electronic  
5 documents, general intangibles, or investment property other than  
6 a certificated security takes free of a security interest if the  
7 licensee or buyer gives value without knowledge of the security  
8 interest and before it is perfected.

9 (e) Except as otherwise provided in Sections 9320 and 9321, if  
10 a person files a financing statement with respect to a purchase  
11 money security interest before or within 20 days after the debtor  
12 receives delivery of the collateral, the security interest takes  
13 priority over the rights of a buyer, lessee, or lien creditor which  
14 arise between the time the security interest attaches and the time  
15 of filing.

16 SEC. 57. Section 9338 of the Commercial Code is amended  
17 to read:

18 9338. If a security interest or agricultural lien is perfected by  
19 a filed financing statement providing information described in  
20 paragraph (5) of subdivision (b) of Section 9516 which is  
21 incorrect at the time the financing statement is filed both of the  
22 following apply:

23 (1) The security interest or agricultural lien is subordinate to a  
24 conflicting perfected security interest in the collateral to the  
25 extent that the holder of the conflicting security interest gives  
26 value in reasonable reliance upon the incorrect information.

27 (2) A purchaser, other than a secured party, of the collateral  
28 takes free of the security interest or agricultural lien to the extent  
29 that, in reasonable reliance upon the incorrect information, the  
30 purchaser gives value and, in the case of tangible chattel paper,  
31 tangible documents, goods, instruments, or a security certificate,  
32 receives delivery of the collateral.

33 SEC. 58. Section 9601 of the Commercial Code is amended  
34 to read:

35 9601. (a) After default, a secured party has the rights  
36 provided in this chapter and, except as otherwise provided in  
37 Section 9602, those rights provided by agreement of the parties.  
38 A secured party may do both of the following:

1 (1) Reduce a claim to judgment, foreclose, or otherwise  
2 enforce the claim, security interest, or agricultural lien by any  
3 available judicial procedure.

4 (2) If the collateral is documents, proceed either as to the  
5 documents or as to the goods they cover.

6 (b) A secured party in possession of collateral or control of  
7 collateral under Section 7106, 9104, 9105, 9106, or 9107 has the  
8 rights and duties provided in Section 9207.

9 (c) The rights under subdivisions (a) and (b) are cumulative  
10 and may be exercised simultaneously.

11 (d) Except as otherwise provided in subdivision (g) and in  
12 Section 9605, after default, a debtor and an obligor have the  
13 rights provided in this chapter and by agreement of the parties.

14 (e) If a secured party has reduced its claim to judgment, the  
15 lien of any levy that may be made upon the collateral by virtue of  
16 an execution based upon the judgment relates back to the earliest  
17 of any of the following:

18 (1) The date of perfection of the security interest or  
19 agricultural lien in the collateral.

20 (2) The date of filing a financing statement covering the  
21 collateral.

22 (3) Any date specified in a statute under which the agricultural  
23 lien was created.

24 (f) A sale pursuant to an execution is a foreclosure of the  
25 security interest or agricultural lien by judicial procedure within  
26 the meaning of this section. A secured party may purchase at the  
27 sale and thereafter hold the collateral free of any other  
28 requirements of this division.

29 (g) Except as otherwise provided in subdivision (c) of Section  
30 9607, this part imposes no duties upon a secured party that is a  
31 consignor or is a buyer of accounts, chattel paper, payment  
32 intangibles, or promissory notes.

33 SEC. 59. Section 10103 of the Commercial Code is amended  
34 to read:

35 10103. (a) In this division, unless the context otherwise  
36 requires:

37 (1) “Buyer in ordinary course of business” means a person  
38 who, in good faith and without knowledge that the sale to him or  
39 her is in violation of the ownership rights or security interest or  
40 leasehold interest of a third party in the goods, buys in ordinary

1 course from a person in the business of selling goods of that kind,  
2 but does not include a pawnbroker. “Buying” may be for cash or  
3 by exchange of other property or on secured or unsecured credit  
4 and includes acquiring goods or documents of title under a  
5 preexisting contract for sale but does not include a transfer in  
6 bulk or as security for or in total or partial satisfaction of a  
7 money debt.

8 (2) “Cancellation” occurs when either party puts an end to the  
9 lease contract for default by the other party.

10 (3) “Commercial unit” means such a unit of goods as by  
11 commercial usage is a single whole for purposes of lease and  
12 division of which materially impairs its character or value on the  
13 market or in use. A commercial unit may be a single article, as a  
14 machine, or a set of articles, as a suite of furniture or a line of  
15 machinery, or a quantity, as a gross or carload, or any other unit  
16 treated in use or in the relevant market as a single whole.

17 (4) “Conforming” goods or performance under a lease contract  
18 means goods or performance that are in accordance with the  
19 obligations under the lease contract.

20 (5) “Consumer lease” means a lease that a lessor regularly  
21 engaged in the business of leasing or selling makes to a lessee  
22 who is an individual and who takes under the lease primarily for  
23 a personal, family, or household purpose.

24 (6) “Fault” means wrongful act, omission, breach, or default.

25 (7) “Finance lease” means a lease with respect to which (A)  
26 the lessor does not select, manufacture, or supply the goods, (B)  
27 the lessor acquires the goods or the right to possession and use of  
28 the goods in connection with the lease, and (C) one of the  
29 following occurs:

30 (i) The lessee receives a copy of the contract by which the  
31 lessor acquired the goods or the right to possession and use of the  
32 goods before signing the lease contract.

33 (ii) The lessee’s approval of the contract by which the lessor  
34 acquired the goods or the right to possession and use of the goods  
35 is a condition to effectiveness of the lease contract.

36 (iii) The lessee, before signing the lease contract, receives an  
37 accurate and complete statement designating the promises and  
38 warranties, and any disclaimers of warranties, limitations or  
39 modifications of remedies, or liquidated damages, including  
40 those of a third party, such as the manufacturer of the goods,

1 provided to the lessor by the person supplying the goods in  
2 connection with or as part of the contract by which the lessor  
3 acquired the goods or the right to possession and use of the  
4 goods.

5 (iv) The lessor, before the lessee signs the lease contract,  
6 informs the lessee in writing (aa) of the identity of the person  
7 supplying the goods to the lessor, unless the lessee has selected  
8 that person and directed the lessor to acquire the goods or the  
9 right to possession and use of the goods from that person, (bb)  
10 that the lessee is entitled under this division to the promises and  
11 warranties, including those of any third party, provided to the  
12 lessor by the person supplying the goods in connection with or as  
13 part of the contract by which the lessor acquired the goods or the  
14 right to possession and use of the goods, and (cc) that the lessee  
15 may communicate with the person supplying the goods to the  
16 lessor and receive an accurate and complete statement of those  
17 promises and warranties, including any disclaimers and  
18 limitations of them or of remedies.

19 (8) “Goods” means all things that are movable at the time of  
20 identification to the lease contract, or are fixtures (Section  
21 10309), but the term does not include money, documents,  
22 instruments, accounts, chattel paper, general intangibles, or  
23 minerals or the like, including oil and gas, before extraction. The  
24 term also includes the unborn young of animals.

25 (9) “Installment lease contract” means a lease contract that  
26 authorizes or requires the delivery of goods in separate lots to be  
27 separately accepted, even though the lease contract contains a  
28 clause “each delivery is a separate lease” or its equivalent.

29 (10) “Lease” means a transfer of the right to possession and  
30 use of goods for a term in return for consideration, but a sale,  
31 including a sale on approval or a sale or return, or retention or  
32 creation of a security interest is not a lease. Unless the context  
33 clearly indicates otherwise, the term includes a sublease.

34 (11) “Lease agreement” means the bargain, with respect to the  
35 lease, of the lessor and the lessee in fact as found in their  
36 language or by implication from other circumstances including  
37 course of dealing or usage of trade or course of performance as  
38 provided in this division. Unless the context clearly indicates  
39 otherwise, the term includes a sublease agreement.

1 (12) “Lease contract” means the total legal obligation that  
2 results from the lease agreement as affected by this division and  
3 any other applicable rules of law. Unless the context clearly  
4 indicates otherwise, the term includes a sublease contract.

5 (13) “Leasehold interest” means the interest of the lessor or  
6 the lessee under a lease contract.

7 (14) “Lessee” means a person who acquires the right to  
8 possession and use of goods under a lease. Unless the context  
9 clearly indicates otherwise, the term includes a sublessee.

10 (15) “Lessee in ordinary course of business” means a person  
11 who, in good faith and without knowledge that the lease to him  
12 or her is in violation of the ownership rights or security interest  
13 or leasehold interest of a third party in the goods, leases in  
14 ordinary course from a person in the business of selling or  
15 leasing goods of that kind, but does not include a pawnbroker.  
16 “Leasing” may be for cash or by exchange of other property or  
17 on secured or unsecured credit and includes acquiring goods or  
18 documents of title under a preexisting lease contract but does not  
19 include a transfer in bulk or as security for or in total or partial  
20 satisfaction of a money debt.

21 (16) “Lessor” means a person who transfers the right to  
22 possession and use of goods under a lease. Unless the context  
23 clearly indicates otherwise, the term includes a sublessor.

24 (17) “Lessor’s residual interest” means the lessor’s interest in  
25 the goods after expiration, termination, or cancellation of the  
26 lease contract.

27 (18) “Lien” means a charge against or interest in goods to  
28 secure payment of a debt or performance of an obligation, but the  
29 term does not include a security interest.

30 (19) “Lot” means a parcel or a single article that is the subject  
31 matter of a separate lease or delivery, whether or not it is  
32 sufficient to perform the lease contract.

33 (20) “Merchant lessee” means a lessee that is a merchant with  
34 respect to goods of the kind subject to the lease.

35 (21) “Present value” means the amount as of a date certain of  
36 one or more sums payable in the future, discounted to the date  
37 certain. The discount is determined by the interest rate specified  
38 by the parties if the rate was not manifestly unreasonable at the  
39 time the transaction was entered into; otherwise, the discount is  
40 determined by a commercially reasonable rate that takes into

1 account the facts and circumstances of each case at the time the  
2 transaction was entered into.

3 (22) “Purchase” includes taking by sale, lease, mortgage,  
4 security interest, pledge, gift, or any other voluntary transaction  
5 creating an interest in goods.

6 (23) “Sublease” means a lease of goods the right to possession  
7 and use of which was acquired by the lessor as a lessee under an  
8 existing lease.

9 (24) “Supplier” means a person from whom a lessor buys or  
10 leases goods to be leased under a finance lease.

11 (25) “Supply contract” means a contract under which a lessor  
12 buys or leases goods to be leased.

13 (26) “Termination” occurs when either party pursuant to a  
14 power created by agreement or law puts an end to the lease  
15 contract otherwise than for default.

16 (b) Other definitions applying to this division and the sections  
17 in which they appear are:

18 “Accessions.” Subdivision (a) of Section 10310.

19 “Construction mortgage.” Paragraph (4) of subdivision (a) of  
20 Section 10309.

21 “Encumbrance.” Paragraph (5) of subdivision (a) of Section  
22 10309.

23 “Fixtures.” Paragraph (1) of subdivision (a) of Section 10309.

24 “Fixture filing.” Paragraph (2) of subdivision (a) of Section  
25 10309.

26 “Purchase money lease.” Paragraph (3) of subdivision (a) of  
27 Section 10309.

28 (c) The following definitions in other divisions apply to this  
29 division:

30 “Account.” Paragraph (2) of subdivision (a) of Section 9102.

31 “Between merchants.” Subdivision (3) of Section 2104.

32 “Buyer.” Paragraph (a) of subdivision (1) of Section 2103.

33 “Chattel paper.” Paragraph (11) of subdivision (a) of Section  
34 9102.

35 “Consumer goods.” Paragraph (23) of subdivision (a) of  
36 Section 9102.

37 “Document.” Paragraph (30) of subdivision (a) of Section  
38 9102.

39 “Entrusting.” Subdivision (3) of Section 2403.



1 “General intangible.” Paragraph (42) of subdivision (a) of  
2 Section 9102.

3 “Instrument.” Paragraph (47) of subdivision (a) of Section  
4 9102.

5 “Merchant.” Subdivision (1) of Section 2104.

6 “Mortgage.” Paragraph (55) of subdivision (a) of Section 9102.

7 “Pursuant to commitment.” Paragraph (68) of subdivision (a)  
8 of Section 9102.

9 ~~“Receipt.”~~ “*Receipt of goods.*” Paragraph (c) of subdivision  
10 (1) of Section 2103.

11 “Sale.” Subdivision (1) of Section 2106.

12 “Sale on approval.” Section 2326.

13 “Sale or return.” Section 2326.

14 “Seller.” Paragraph (d) of subdivision (1) of Section 2103.

15 (d) In addition, Division 1 contains general definitions and  
16 principles of construction and interpretation applicable  
17 throughout this division.

18 SEC. 60. Section 10207 of the Commercial Code is repealed.

19 SEC. 61. Section 10501 of the Commercial Code is amended  
20 to read:

21 10501. (a) Whether the lessor or the lessee is in default under  
22 a lease contract is determined by the lease agreement and this  
23 division.

24 (b) If the lessor or the lessee is in default under the lease  
25 contract, the party seeking enforcement has rights and remedies  
26 as provided in this division and, except as limited by this  
27 division, as provided in the lease agreement.

28 (c) If the lessor or the lessee is in default under the lease  
29 contract, the party seeking enforcement may reduce the party’s  
30 claim to judgment, or otherwise enforce the lease contract by  
31 self-help or any available judicial procedure or nonjudicial  
32 procedure, including administrative proceeding, arbitration, or  
33 the like, in accordance with this division.

34 (d) Except as otherwise provided in subdivision (a) of Section  
35 1305 or this division or the lease agreement, the rights and  
36 remedies referred to in subdivisions (b) and (c) are cumulative.

37 (e) If the lease agreement covers both real property and goods,  
38 the party seeking enforcement may proceed under this chapter as  
39 to the goods, or under other applicable law as to both the real  
40 property and the goods in accordance with that party’s rights and

1 remedies in respect of the real property, in which case this  
2 chapter does not apply.

3 SEC. 62. Section 10514 of the Commercial Code is amended  
4 to read:

5 10514. (a) In rejecting goods, a lessee's failure to state a  
6 particular defect that is ascertainable by reasonable inspection  
7 precludes the lessee from relying on the defect to justify rejection  
8 or to establish default:

9 (1) If, stated seasonably, the lessor or the supplier could have  
10 cured it (Section 10513); or

11 (2) Between merchants if the lessor or the supplier after  
12 rejection has made a request in writing for a full and final written  
13 statement of all defects on which the lessee proposes to rely.

14 (b) A lessee's failure to reserve rights when paying rent or  
15 other consideration against documents precludes recovery of the  
16 payment for defects apparent in the documents.

17 SEC. 63. Section 10518 of the Commercial Code is amended  
18 to read:

19 10518. (a) After a default by a lessor under the lease contract  
20 of the type described in subdivision (a) of Section 10508, or, if  
21 agreed, after other default by the lessor, the lessee may cover by  
22 making any purchase or lease of or contract to purchase or lease  
23 goods in substitution for those due from the lessor.

24 (b) Except as otherwise provided with respect to damages  
25 liquidated in the lease agreement (Section 10504) or otherwise  
26 determined pursuant to agreement of the parties (Sections 1302  
27 and 10503), if a lessee's cover is by a lease agreement  
28 substantially similar to the original lease agreement and the new  
29 lease agreement is made in good faith and in a commercially  
30 reasonable manner, the lessee may recover from the lessor as  
31 damages (1) the present value, as of the date of the  
32 commencement of the term of the new lease agreement, of the  
33 rent under the new lease agreement applicable to that period of  
34 the new lease term which is comparable to the then remaining  
35 term of the original lease agreement minus the present value as of  
36 the same date of the total rent for the then remaining lease term  
37 of the original lease agreement, and (2) any incidental or  
38 consequential damages, less expenses saved in consequence of  
39 the lessor's default.

1 (c) If a lessee's cover is by lease agreement that for any reason  
2 does not qualify for treatment under subdivision (b), or is by  
3 purchase or otherwise, the lessee may recover from the lessor as  
4 if the lessee had elected not to cover and Section 10519 governs.

5 SEC. 64. Section 10519 of the Commercial Code is amended  
6 to read:

7 10519. (a) Except as otherwise provided with respect to  
8 damages liquidated in the lease agreement (Section 10504) or  
9 otherwise determined pursuant to agreement of the parties  
10 (Sections 1302 and 10503), if a lessee elects not to cover or a  
11 lessee elects to cover and the cover is by lease agreement that for  
12 any reason does not qualify for treatment under subdivision (b)  
13 of Section 10518, or is by purchase or otherwise, the measure of  
14 damages for nondelivery or repudiation by the lessor or for  
15 rejection or revocation of acceptance by the lessee is the present  
16 value, as of the date of the default, of the then market rent minus  
17 the present value as of the same date of the original rent,  
18 computed for the remaining lease term of the original lease  
19 agreement, together with incidental and consequential damages,  
20 less expenses saved in consequence of the lessor's default.

21 (b) Market rent is to be determined as of the place for tender  
22 or, in cases of rejection after arrival or revocation of acceptance,  
23 as of the place of arrival.

24 (c) Except as otherwise agreed, if the lessee has accepted  
25 goods and given notification (subdivision (c) of Section 10516),  
26 the measure of damages for nonconforming tender or delivery or  
27 other default by a lessor is the loss resulting in the ordinary  
28 course of events from the lessor's default as determined in any  
29 manner that is reasonable together with incidental and  
30 consequential damages, less expenses saved in consequence of  
31 the lessor's default.

32 (d) Except as otherwise agreed, the measure of damages for  
33 breach of warranty is the present value at the time and place of  
34 acceptance of the difference between the value of the use of the  
35 goods accepted and the value if they had been as warranted for  
36 the lease term, unless special circumstances show proximate  
37 damages of a different amount, together with incidental and  
38 consequential damages, less expenses saved in consequence of  
39 the lessor's default or breach of warranty.

1 SEC. 65. Section 10526 of the Commercial Code is amended  
2 to read:

3 10526. (a) A lessor may stop delivery of goods in the  
4 possession of a carrier or other bailee if the lessor discovers the  
5 lessee to be insolvent and may stop delivery of carload,  
6 truckload, planeload, or larger shipments of express or freight if  
7 the lessee repudiates or fails to make a payment due before  
8 delivery, whether for rent, security, or otherwise under the lease  
9 contract, or for any other reason the lessor has a right to withhold  
10 or take possession of the goods.

11 (b) In pursuing its remedies under subdivision (a), the lessor  
12 may stop delivery until:

13 (1) Receipt of the goods by the lessee;

14 (2) Acknowledgment to the lessee by any bailee of the goods,  
15 except a carrier, that the bailee holds the goods for the lessee; or

16 (3) Such an acknowledgment to the lessee by a carrier via  
17 reshipment or as a warehouse.

18 (c) (1) To stop delivery, a lessor shall so notify as to enable  
19 the bailee by reasonable diligence to prevent delivery of the  
20 goods.

21 (2) After notification, the bailee shall hold and deliver the  
22 goods according to the directions of the lessor, but the lessor is  
23 liable to the bailee for any ensuing charges or damages.

24 (3) A carrier who has issued a nonnegotiable bill of lading is  
25 not obliged to obey a notification to stop received from a person  
26 other than the consignor.

27 SEC. 66. Section 10527 of the Commercial Code is amended  
28 to read:

29 10527. (a) After a default by a lessee under the lease contract  
30 of the type described in subdivision (a) of, or paragraph (1) of  
31 subdivision (c) of, Section 10523 or after the lessor refuses to  
32 deliver or takes possession of goods (Section 10525 or 10526),  
33 or, if agreed, after other default by a lessee, the lessor may  
34 dispose of the goods concerned or the undelivered balance  
35 thereof by lease, sale, or otherwise.

36 (b) Except as otherwise provided with respect to damages  
37 liquidated in the lease agreement (Section 10504) or otherwise  
38 determined pursuant to agreement of the parties (Sections 1302  
39 and 10503), if the disposition is by lease agreement substantially  
40 similar to the original lease agreement and the new lease

1 agreement is made in good faith and in a commercially  
2 reasonable manner, the lessor may recover from the lessee as  
3 damages (1) accrued and unpaid rent as of the date of the  
4 commencement of the term of the new lease agreement, (2) the  
5 present value, as of the same date, of the total rent for the then  
6 remaining lease term of the original lease agreement minus the  
7 present value, as of the same date, of the rent under the new lease  
8 agreement applicable to that period of the new lease term which  
9 is comparable to the then remaining term of the original lease  
10 agreement, and (3) any incidental damages allowed under  
11 Section 10530, less expenses saved in consequence of the  
12 lessee's default.

13 (c) If the lessor's disposition is by lease agreement that for any  
14 reason does not qualify for treatment under subdivision (b), or is  
15 by sale or otherwise, the lessor may recover from the lessee as if  
16 the lessor had elected not to dispose of the goods and Section  
17 10528 governs.

18 (d) A subsequent buyer or lessee who buys or leases from the  
19 lessor in good faith for value as a result of a disposition under  
20 this section takes the goods free of the original lease contract and  
21 any rights of the original lessee even though the lessor fails to  
22 comply with one or more of the requirements of this division.

23 (e) The lessor is not accountable to the lessee for any profit  
24 made on any disposition. A lessee who has rightfully rejected or  
25 justifiably revoked acceptance shall account to the lessor for any  
26 excess over the amount of the lessee's security interest  
27 (subdivision (e) of Section 10508).

28 SEC. 67. Section 10528 of the Commercial Code is amended  
29 to read:

30 10528. (a) Except as otherwise provided with respect to  
31 damages liquidated in the lease agreement (Section 10504) or  
32 otherwise determined pursuant to agreement of the parties  
33 (Sections 1302 and 10503), if a lessor elects to retain the goods  
34 or a lessor elects to dispose of the goods and the disposition is by  
35 lease agreement that for any reason does not qualify for treatment  
36 under subdivision (b) of Section 10527, or is by sale or  
37 otherwise, the lessor may recover from the lessee as damages for  
38 a default of the type described in subdivision (a) of, or paragraph  
39 (1) of subdivision (c) of, Section 10523, or, if agreed, for other  
40 default of the lessee, (1) accrued and unpaid rent as of the date of

1 default if the lessee has never taken possession of the goods, or,  
2 if the lessee has taken possession of the goods, as of the date the  
3 lessor repossesses the goods or an earlier date on which the  
4 lessee makes a tender of the goods to the lessor, (2) the present  
5 value as of the date determined under paragraph (1) of the total  
6 rent for the then remaining lease term of the original lease  
7 agreement minus the present value as of the same date of the  
8 market rent at the place where the goods are located computed  
9 for the same lease term, and (3) any incidental damages allowed  
10 under Section 10530, less expenses saved in consequence of the  
11 lessee's default.

12 (b) If the measure of damages provided in subdivision (a) is  
13 inadequate to put a lessor in as good a position as performance  
14 would have, the measure of damages is the present value of the  
15 profit, including reasonable overhead, the lessor would have  
16 made from full performance by the lessee, together with any  
17 incidental damages allowed under Section 10530, due allowance  
18 for costs reasonably incurred and due credit for payments or  
19 proceeds of disposition.

20 SEC. 68. Section 11105 of the Commercial Code is amended  
21 to read:

22 11105. (a) In this division:

23 (1) "Authorized account" means a deposit account of a  
24 customer in a bank designated by the customer as a source of  
25 payment of payment orders issued by the customer to the bank. If  
26 a customer does not so designate an account, any account of the  
27 customer is an authorized account if payment of a payment order  
28 from that account is not inconsistent with a restriction on the use  
29 of that account.

30 (2) "Bank" means a person engaged in the business of banking  
31 and includes a savings bank, savings and loan association, credit  
32 union, and trust company. A branch or separate office of a bank  
33 is a separate bank for purposes of this division.

34 (3) "Customer" means a person, including a bank, having an  
35 account with a bank or from whom a bank has agreed to receive  
36 payment orders.

37 (4) "Funds-transfer business day" of a receiving bank means  
38 the part of a day during which the receiving bank is open for the  
39 receipt, processing, and transmittal of payment orders and  
40 cancellations and amendments of payment orders.

(5) “Funds-transfer system” means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) [Reserved]

(7) “Prove” with respect to a fact means to meet the burden of establishing the fact under subdivision (8) of Section 1201.

(b) Other definitions applying to this division and the sections in which they appear are:

Acceptance: Section 11209.

Beneficiary: Section 11103.

Beneficiary’s bank: Section 11103.

Executed: Section 11301.

Execution date: Section 11301.

Funds transfer: Section 11104.

Funds-transfer system rule: Section 11501.

Intermediary bank: Section 11104.

Originator: Section 11104.

Originator’s bank: Section 11104.

Payment by beneficiary’s bank to beneficiary: Section 11405.

Payment by originator to beneficiary: Section 11406.

Payment by sender to receiving bank: Section 11403.

Payment date: Section 11401.

Payment order: Section 11103.

Receiving bank: Section 11103.

Security procedure: Section 11201.

Sender: Section 11103.

(c) The following definitions in Division 4 (commencing with Section 4101) apply to this division:

Clearinghouse: Section 4104.

Item: Section 4104.

Suspends payments: Section 4104.

(d) In addition, Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 69. Section 11106 of the Commercial Code is amended to read:

11106. (a) The time of receipt of a payment order or communication canceling or amending a payment order is

1 determined by the rules applicable to receipt of a notice stated in  
2 Section 1202. A receiving bank may fix a cutoff time or times on  
3 a funds-transfer business day for the receipt and processing of  
4 payment orders and communications canceling or amending  
5 payment orders. Different cutoff times may apply to payment  
6 orders, cancellations, or amendments, or to different categories of  
7 payment orders, cancellations, or amendments. A cutoff time  
8 may apply to senders generally or different cutoff times may  
9 apply to different senders or categories of payment orders. If a  
10 payment order or communication canceling or amending a  
11 payment order is received after the close of a funds-transfer  
12 business day or after the appropriate cutoff time on a  
13 funds-transfer business day, the receiving bank may treat the  
14 payment order or communication as received at the opening of  
15 the next funds-transfer business day.

16 (b) If this division refers to an execution date or payment date  
17 or states a day on which a receiving bank is required to take  
18 action, and the date or day does not fall on a funds-transfer  
19 business day, the next day that is a funds-transfer business day is  
20 treated as the date or day stated, unless the contrary is stated in  
21 this division.

22 SEC. 70. Section 11204 of the Commercial Code is amended  
23 to read:

24 11204. (a) If a receiving bank accepts a payment order issued  
25 in the name of its customer as sender which is (i) not authorized  
26 and not effective as the order of the customer under Section  
27 11202, or (ii) not enforceable, in whole or in part, against the  
28 customer under Section 11203, the bank shall refund any  
29 payment of the payment order received from the customer to the  
30 extent the bank is not entitled to enforce payment and shall pay  
31 interest on the refundable amount calculated from the date the  
32 bank received payment to the date of the refund. However, the  
33 customer is not entitled to interest from the bank on the amount  
34 to be refunded if the customer fails to exercise ordinary care to  
35 determine that the order was not authorized by the customer and  
36 to notify the bank of the relevant facts within a reasonable time  
37 not exceeding 90 days after the date the customer received  
38 notification from the bank that the order was accepted or that the  
39 customer's account was debited with respect to the order. The  
40 bank is not entitled to any recovery from the customer on account



1 of a failure by the customer to give notification as stated in this  
2 section.

3 (b) Reasonable time under subdivision (a) may be fixed by  
4 agreement as stated in subdivision (b) of Section 1302, but the  
5 obligation of a receiving bank to refund payment as stated in  
6 subdivision (a) may not otherwise be varied by agreement.

7 SEC. 71. Section 13104 of the Commercial Code is repealed.

8 SEC. 72. Section 44 of this act applies to a document of title  
9 that is issued or a bailment that arises on or after January 1, 2007.

10 That section does not apply to a document of title that is issued or  
11 a bailment that arises before January 1, 2007, even if the  
12 document of title or bailment would be subject to that section if  
13 the document of title had been issued or bailment had arisen on  
14 or after January 1, 2007. Section 44 of this act does not apply to  
15 a right of action that has accrued before January 1, 2007.

16 SEC. 73. A document of title issued or a bailment that arises  
17 before January 1, 2007, and the rights, obligations, and interests  
18 flowing from that document or bailment are governed by any  
19 statute or other rule amended or repealed by this act as if  
20 amendment or repeal had not occurred and may be terminated,  
21 completed, consummated, or enforced under that statute or other  
22 rule.